

ROCKVILLE TOWN SQUARE  
CONDOMINIUMS FOR BLOCKS 1 & 2, 3B, 4 AND 5  
OF ROCKVILLE TOWN SQUARE

Executive Summary

**I. Condominium Structure Overview.**

Within each of these Blocks there will exist separate ownership interests. The City of Rockville ("City") will own the public parking garage areas, Federal Realty Investment Trust ("FRIT") will own the commercial areas and an RTS-RD Rockville, LLC entity ("RTS") will own and develop the residential areas.

- Blocks 1 and Block 2 will be combined into a single, master building condominium regime because the residential units within these Blocks are interconnected into a single structure. This master building condominium regime will initially consist of three (3) condominium units: (i) the Parking Unit to be owned by the City, (ii) the Commercial Unit to be owned by FRIT, and (iii) the Residential Unit to be owned and developed by RTS.
- Block 3A will not be subjected to a condominium regime and therefore is not discussed in this Executive Summary.
- Block 3B will be subjected to a condominium regime; however, no parking will exist on Block 3B. Therefore, the City will not be a member of the condominium regime for Block 3B.
- Block 4 will be subjected to a separate master building condominium regime, that will initially consist of three (3) condominium units: (i) the Parking Unit to be owned by the City, (ii) the Commercial Unit to be owned by FRIT, and (iii) the Residential Unit and related Residential Parking Facility to be owned and developed by RTS.
- Block 5 will be subjected to a separate master building condominium regime, that will initially consist of three (3) condominium units: (i) the Parking Unit to be owned by the City, (ii) the Commercial Unit to be owned by FRIT, and (iii) the Residential Unit and related Residential Parking Facility to be owned and developed by RTS.

**II. The Condominium and How it Works.**

A condominium may be used for establishing and managing the operation of mixed-use ownership projects. A condominium refers to a form of ownership. Owners within the condominium can own separate "parcels" of real estate, which are generally bounded within the inside surfaces of the walls and ceilings, and other boundaries of a particular space.

All unit owners within a condominium own a separate condominium "unit." They also each own essentially in common with the other unit owners an undivided interest in what are referred as

the common elements of the condominium. The Common Elements are generally the structural or shared areas of the condominium property.

In Maryland, the Maryland Condominium Act ("Act") generally provides a framework for the operation and ownership for condominium units. The fundamental documents required under the Act to create a condominium are the Declaration, the Bylaws, and the Condominium Plat. However, in a mixed-use condominium project such as this, rules and regulations governing the condominium are also essential for the efficient operation of the condominium project.

The Declaration and the Plat submit the Property to the Act and divide the Property into units and common elements. The Declaration is accompanied by the Bylaws. The Bylaws address the operation of the condominium by the Council of Unit Owners (also commonly referred to as the "association").

Below is an Executive Summary of the significant provisions contained the condominium documents for Blocks 1/2, 4 and 5. The condominium documents for each of these Blocks consist of Declaration, Bylaws and Rules and Regulations (the "Condominium Documents"). The Condominium Documents read exactly the same for each Block except where differences are noted in this Executive Summary.

### **III. Summary of the Declaration.**

Article 1. Definitions. Article 1 sets forth the defined terms used throughout the Declaration, Bylaws, Rules and Regulations and Plat. RTS will own Blocks 1 & 2, 3B and 5 when the Declaration and Plat for these Blocks are recorded; therefore RTS is the Declarant under the Declaration for these Blocks. The City will own Block 4 when the Declaration and Plat for Block 4 is recorded; therefore the City is the Declarant under the Declaration for Block 4.

Article 2. Creation of the Condominium Regime. Article 2 describes the creation of the Condominium regime and each Unit Owner's Percentage Interest in the Common Elements. Each Unit, the dimensions of the Units and the Common Elements will be shown on the Condominium Plat. Each Unit Owner's Percentage Interest in the Common Elements, General Common Expenses and Common Profits of the Condominium are attached to the Declaration as Exhibit D. The Residential Unit Owner and Commercial Unit Owner each have a 33% Percentage Interest allocation. The Parking Unit Owner has a Percentage Interest allocation of 34% (for rounding purposes). Each Unit Owner has an undivided interest as a tenant in common in the General Common Elements in accordance with its Percentage Interest.

- General Common Elements. The General Common Elements consist of the Property, except for the Units and any Limited Common Elements. The General Common Elements will be shown on the Condominium Plat.
- Limited Common Elements. The Limited Common Elements consist of Common Elements that are designated as Limited Common Elements on the Condominium Plat, or a part of the Common Elements that serve less than all of the Units, as determined by the

Board of Directors of the Condominium to be Limited Common Elements. Decisions concerning the use, operation, maintenance or repair of the limited common element appurtenant to one or more Units shall be solely decided by the Unit Owners benefited by the use of the limited common element.

- Reserve Common Elements are General Common Elements designated as Reserved Common Elements on the Condominium Plat or those elements where a Unit Owner has been granted irrevocable license for the use and maintenance of the General Common Elements by such Unit Owner. Examples set forth in the Declaration of Reserve General Common Elements are pop-out storefronts, outdoor dining areas to be used by FRIT and kiosks. FRIT shall have the right from time to time to designate portions of the General Common Elements adjacent to or within reasonable proximity of the Commercial Unit as a reserve general common element. The Commercial Unit Owner shall have priority over the other Unit Owners to use Reserved General Common Elements for outdoor dining and seating. Any Unit Owner who is granted a license to use a Reserved General Common Element shall be responsible for the care, operation, cleaning, maintenance and repair of the Reserved General Common Element during the term of such license.

Article 3. Easements, Cooperation in Development and Alternative Percentage Allocation. For the most part, Article 3 of the Declaration provides the Board of Directors, Council of Unit Owners and each Unit Owner with the necessary and requisite easements throughout the Property for utilities, ingress, egress and access. Article 3 also provides such parties with those easements necessary for each of them to carry out and perform their respective maintenance, repair, operations and other obligations required to be performed pursuant to the Condominium Documents. The Unit Owners may, however, establish restricted areas within their respective Units where entry by such parties shall be exercised in a commercially reasonable manner so as to minimize inconvenience or disruption to the activities being conducted in the Unit. Examples of restricted areas within a Unit may include jewelry stores, bank vaults, cash handling areas, pharmacy inventory storage areas, and display areas.

Article 3 also establishes an easement granted by the Parking Unit Owner for the benefit of the permitted Parking Beneficiaries for ingress, egress and access through the Parking Unit for parking. Note that the Parking Unit will not be a public garage that is dedicated to the public. Instead, the City will own the Parking Unit as a "private condominium unit." The Parking Beneficiaries are the Residential Unit Owner, Commercial Unit Owner, owners of dwelling Units within the Residential Unit, and their respective agents, employees, tenants, subtenants, licensees, customers and invitees.

Article 3 also establishes general and requisite easements for the Unit Owners for the purpose of respective construction activities upon the Property and development of the Property.

Section 3.2(h) of Article 3 establishes an easement in, over, under, through and across the Common Elements of the Property for the benefit of the Commercial Management District for the purpose of inspection, operation, maintenance, repair, improvement and replacement of public amenities for the project. The duties of the Commercial Management District will be

governed by separate agreement between the Commercial Management District and the Council of Unit Owners.

Note: In Section 3.2(i) of Article 3, for Block 5 only, there is a non-exclusive easement reserved for the general public for the and right of passage on, through, over and across the pedestrian walkway for purposes of pedestrian ingress and egress to, from and across Block 5.

Section 3.8 of Article 3 provides for alternative percentage allocation and special maintenance expenses for certain General Common Expenses. It is anticipated that the level of use of certain General Common Elements might require a different Percentage Interest allocation for some Unit Owners. Also, that some General Common Expenses will not be shared among the Unit Owners according to their allocated Percentage Interest, again based upon the level of use by the Unit Owners. Therefore, Section 3.8 provides that while General Common Expenses will be shared among the Unit Owners based on their respective Percentage Interests, some costs associated with the operation, maintenance, insurance, repair and replacement of certain portions of the Property shall be treated as special maintenance items, and will be described on Exhibit E attached to the Declaration. These special maintenance items will have an alternative percentatge allocation applied to them as determined by the Unit Owners and/or the Board of Directors.

#### Article 4. Rules, Management.

Section 4.1 provides that the Board of Directors may promulgate reasonable rules concerning the use and enjoyment of the Property. Rules that affect two or fewer Owners shall only require the consent of the effected Unit Owners to be amended.

Section 4.2 provides that the Board of Directors may employ one or more professional experienced Condominium managing agent to oversee the day-to-day operation of all or a portion of the Condominium. The Condominium managing agent shall be entitled to receive a reasonable fee as determined by the Board of Directors.

#### Article 5. Unit Autonomy and council of Unit Owners Authority.

Section 5.1 of Article 5 provides that it is the intent of the Condominium Documents to establish a viable mixed-use condominium whereby the commercial Unit, Residential Unit and Parking Unit can harmoniously exist with minimal disturbance or interference with one another. It is intended that each Unit be able to operate without unreasonable interference from another Unit or Unit Owner, and that each Unit Owner shall have exclusive control over its Unit. Other than the use restrictions set forth in Article 8 of the Declaration (discussed below), nothing in the Condominium Documents shall confer, be deemed to confer any right of review and/or of approval of any Unit Owner or third party with respect to the nature or quality of the tenants, tenant mix, tenant selection or leasing program for the Commercial Unit or the Residential Unit, or leasing program for parking spaces within the Parking Unit.

In addition, the Council of Unit Owners and Board of Directors shall exercise their rights and obligations under the Condominium Documents using commercially reasonable business judgment.

Article 6. Security. The Council of Unit Owners and Board of Directors have the right, but not the obligation, to maintain or support certain activities within the Property designated to enhance safety within the Condominium. The Council of Unit Owners, Declarant or the Unit Owners, their respective successors, their assigns nor any of their respective officers, members, employees, or directors, or affiliates shall in any way be considered insurers or guarantors of security within the Condominium, nor shall any of them be responsible or held liable for any loss, damage, injury or death by reasons of failure to provide adequate security or the effectiveness of the security system within the Condominium.

Article 7. Indemnities. Article 7 provides for mutual indemnities. Each Unit Owner shall defend, indemnify and hold harmless at its sole expense, the Council of Unit Owners and any other Unit Owner against and from all claims, demands, liabilities, penalties, damages, actions, suits, losses, expenses and judgments to the extent arising out of (i) the development, construction, use, operation or maintenance by such indemnitor of any portion of the Condominium or (ii) the indemnitor's use or exercise of the easements established in the Declaration. The indemnification is not applicable to the extent that any claim, demand, liability, penalty, damage, action, suit, expense, loss or judgment arises out of injury, death or damage occurring in or about the Common Elements and is actually recovered by liability insurance maintained by the Council of Unit Owners.

Article 8. Use Restrictions. Article 8 sets forth various restrictions on the use of Units and Common Elements within the Condominium.

Section 8.2 of Article 8 states that the Unit shall be operated in accordance with the Condominium Documents and applicable law.

The Parking Unit shall always be utilized for parking and related purposes.

The Commercial Unit shall always be used for commercial, retail and related purposes, and the Residential Unit shall always be used for residential and related purposes.

No part of the Residential Unit shall be used for the purpose of an apartment hotel, time share development, assisted living residence, nursing home, homeless shelters, subsidized housing or similar moderate to low-income housing, except that the Residential Unit may be used for corporate rentals that do not exceed 20% of all the dwelling Units within the Residential Unit. The restriction regarding subsidized or moderate to low-income housing does not apply to any moderately priced dwelling units (MPDUs) imposed by the County.

Section 8.2(b) of Article 8 sets out numerous specific restrictions regarding the use of any Unit. These restricted uses generally consist of offensive, illegal or commercially undesirable types of uses.

Article 9. Insurance. Section 9.1 of the Declaration sets forth the insurance to be carried by the Council of Unit Owners. The Council of Unit Owners shall obtain the following insurance in connection with the Condominium:

- Insurance against risks of loss or damage to the Base Building (which is the building except for the Improvements and Betterments located in the building. See Section 9.3, below. This coverage shall be under an “all risk of physical loss” extended form or equivalent policy in amounts of not less than the full replacement cost of the Base Building (exclusive of excavation and foundation costs). Policy shall name the Unit Owners and Council of Unit Owners as additional insureds. Policy shall contain standard non-contributory mortgage
- Commercial liability insurance and business auto liability insurance against claims for personal and bodily injury, death or property damage in the amount not less than \$25,000,000.00 per occurrence/annual aggregate. The policy shall name the members of the Board of Directors and Council of Unit Owners as insureds and the individual Unit Owners as additional insureds. Policy shall contain standard non-contributory mortgage clauses.
- Worker’s compensation insurance covering all persons employed by the Boards of Directors or the Council of Unit Owners in connection with any work done on or about the Property
- Comprehensive boiler, machinery and pressure-vessel insurance in an amount not less than \$5,000,000.00 per occurrence for damage to Property. Policy shall name the Unit Owners and Council of Unit Owners as additional insureds. Policy shall contain standard non-contributory mortgage clauses.
- Builder’s risk insurance during any period in which significant construction, alterations or repairs or reconstruction is being undertaken by the Boards of Directors. This coverage shall cover the total completed value including soft costs with respect to improvements being constructed, altered, repair or reconstructed. Policy shall name the Unit Owners and Council of Unit Owners as additional insureds. Policy shall contain standard non-contributory mortgage clauses.
- Any other insurance which the Board of Directors determines is desirable.

Section 9.2 of Article 9 provides that each Unit Owner may not more than every three (3) years reevaluate the adequacy of the insurance coverages obtained by the Council of Unit Owners.

Section 9.3 of Article 9 provides that Each Unit Owner shall carry the insurance required under the Declaration. In addition, each Unit Owner is required to carry “all risk” of insurance for physical loss insurance coverage insuring its Improvements and Betterments. Improvements and Betterments consist of those portions of the interior of a Unit whose removal will not materially adversely affect the structure, safety or exterior appearance of the base building or functionality or any other Unit located within the building.

Section 9.3 also permits the City to self-insure for the insurance coverage the City is required to carry. In summary, Section 9.3 states that:

- During such time that the City of Rockville is the fee simple Owner of the Parking Unit, the City may maintain the insurance required under the Declaration pursuant to the City's self-insurance program and administered by the Division of Risk Management for Montgomery County, Maryland.
- If the City elects to self insure, then the Council of Unit Owners to annually audit the funds maintained and the self insurance program in order to ensure that such funds are adequate to pay out any such claims or potential claims.
- If such funds are determined to be inadequate, then the Council of Unit Owners may purchase the insurance coverage required to be maintained by the City of Rockville and the City of Rockville shall reimburse the Council of Unit Owners the cost of requiring such policy as a special maintenance expense.
- In addition, if the City self insures, the City as the Parking Unit Owner, shall defend, indemnify and hold harmless at its sole expense, the Council of Unit Owners and any other Unit Owner against and from all claims, demands, liabilities, penalties, damages, actions, suits, losses, expenses and judgments which may be imposed on or incurred by or asserted against the Council of Unit Owners or any other Unit Owner to the extent of funds in the Parking Unit Owner's self insurance program, if the program is insufficient or inadequate for the purposes of paying out such claim.
- This obligation to indemnify by the City as the Parking Unit Owner is not subject to any defense of sovereign immunity that the City might otherwise have and such defense is barred. Section 9.4 provides that with respect to property loss or damage, the Council of Unit Owners and Board of Directors waive any rights of recovery against the Unit Owners and the Unit Owners waive any rights of recovery against the other Unit Owners and the Council of Unit Owners.

Article 10. Repair and Reconstruction after Fire and Other Casualty. Article 10 sets out the general procedures for repair and reconstruction after fire or other casualty. The Board of Directors may vote not to repair or replace any portion of the base building or Common Elements if the Condominium is terminated, or it repair or replacement would be illegal under any applicable law or if the Unit Owners vote not to repair or rebuild.

Article 11. Miscellaneous. Article 11 contains various miscellaneous provisions within the Declaration. Of significance, are the following Sections:

Section 11.7 states that the Declaration may be amended or terminated only with the express written consent of all members of the Board of Directors.

Section 11.14 provides that if unanimous consent or agreement of all the Unit Owners or members of the Board of Directors is required and is not forthcoming, then the parties may submit the issue, dispute or disagreement to binding arbitration to break the deadlock. In

addition, if there is any dispute or disagreement by or among any of the Unit Owners and/or the Board of Directors, the matter shall be submitted to binding arbitration.

Section 11.15 provides that separate condominium regimes may be established within the Units. Note that for each Block (other than 3B) each Residential Unit will be subjected to a separate sub-condominium regime by RTS.

Section 11.16 states that where the Board's or any Unit Owner's approval or consent is required under the Condominium Documents, such approval or consent shall be in writing and such approval or consent will not be unreasonably withheld, delayed or conditioned.

Section 11.17 states that where under the Condominium Documents, the Board of a Unit Owner is entitled to exercise its rights or performance obligations in its sole and absolute discretion, then the Board of any Unit Owner shall exercise such right in good faith and fair dealing.

#### Exhibits.

Exhibit A is a legal description of the entire Property.

Exhibit B consists of the Bylaws for the Condominium.

Exhibit C consists of 8 ½ x 11 copies of the Condominium Plat.

Exhibit D sets forth each Unit Owner's Percentage Interest in the General Common Elements, general Common Expenses and the vote in the Council of Unit Owner. The Residential Unit and the Commercial Unit each have a 33% Percentage Interest. The Parking Unit Owner's Percentage Interest is 34% (for rounding purposes). Each Unit has one (1) vote in the Council of Unit Owners.

Exhibit E will consist of a schedule of alternative percentage allocations for special maintenance items and special maintenance expenses. These alternative percentage allocations will be different from the percentage allocations set forth on Exhibit D otherwise held by each Unit Owner.

#### **IV. Summary of the Bylaws.**

Article 1. Provisions. Article 1 sets forth the general provisions of the Bylaws affirming that a Condominium has been established by subjecting the Property to a Condominium regime pursuant to the Act.

Article 2. Council of Unit Owners. Pursuant to Article 2 of the Bylaws, the Council of Unit Owners will be an unincorporated entity. All Unit Owners within the Condominium are members.

Pursuant to Article 2, the powers and duties of the Council of Unit Owners includes establishing methods for collecting assessments and charges for Common Expenses and arranging for the management of the Common Elements. The responsibilities of the Council of Unit Owners shall be exercised exclusively by the Board of Directors for the Council of Unit Owners.



Section 2.2 of Article 2 provides that meetings of the Council of Unit Owners shall be held only as determined from time to time by the Board of Directors.

Section 2.4 of Article 2 provides that the Board of Directors shall notify all Unit Owners of any meeting of the Council of Unit Owners at least ten days but not more than 90 days prior to such meeting.

Section 2.5 of Article 2 provides that the presence in person or proxy of all Unit Owners shall be required to constitute a quorum at all meetings of the Council of Unit Owners.

Section 2.7 of Article 2 provides that voting at all meetings of the Council of Unit Owners shall be based upon one (1) vote per Unit. It also provides that, except as otherwise provided in the Condominium Documents, a unanimous vote of all Unit Owners is required to adopt decisions at any meeting of the Council of Unit Owners.

Section 2.7(c) of Article 2 provides that no Unit Owner may vote at a meeting if the Unit Owner remains more than 60 delinquent in the payment of bona fide financial obligations to the Council of Unit Owners.

Section 2.8 of Article 2 provides that a vote by a Unit Owner at a meeting of the Council of Unit Owners may be cast in person or by proxy.

### Article 3 Board of Directors.

Section 3.1 provides for the powers and duties of the Board of Directors for the Council of Unit Owners. The powers and duties that may be exercised for the Board of Directors includes:

- Prepare and adopt the annual budget for the Condominium.
- Assess Unit Owners to defray the costs and expenses related to maintenance and operation of Common Elements and establish the means and methods of collecting assessments from the Unit Owners.
- Provide for the operation, care, repair, upkeep, replacement and maintenance of Common Elements and any other portions of the Condominium for which the Council of Unit Owners is responsible.
- Designate, hire, dismiss the personnel necessary for the operation, care, repair , upkeep, replacement and maintenance of the Common Elements, and any other portion of the Condominium that the Council of Unit Owners is responsible.
- Collect annual assessments and special maintenance expenses from the Unit Owners.
- Adopt and amend rules and regulations for the Condominium.
- Open bank accounts on behalf of the Council of Unit Owners and designate the signatories.

- Enforce, by legal means, the provisions of the Condominium Documents.
- Obtain and carry insurance against casualties and liabilities.
- Pay the cost of all services approved by the Board of Directors that are rendered on behalf of the Council of Unit Owners.
- Keep all books and records with detail accounts affecting the Common Elements and administration of the Common Elements specifying the expenses for maintenance, repair, replacement of Common Elements and any other expenses incurred that are the responsibility of the Council of Unit Owners. The books, accounts, records kept by the Council of Unit Owners may be audited by Unit Owners, their attorneys, accountants, mortgagees and authorized agents.
- Notify mortgagees of a Unit of any material default under the Condominium Documents by a Unit Owner.
- Borrow money on behalf of the Condominium when required in connection with the operation, care, upkeep, repair, replacement and maintenance of the Common Elements, and other areas of the Condominium for which the Council of Unit Owners is responsible.
- Grant and accept easements and licenses through or over the General Common Elements.
- Sue and be sued, complain and defend., settle claims or intervene in litigation, arbitration, mediation or any other form of action or suit on behalf of the Council of Unit Owners.
- Exercise for the Council of Unit Owners all powers, duties and authority vested or delegated to the Council of Unit Owners pursuant to the act and the Condominium Documents.

Section 3.2 of the Bylaws provides that there shall be three (3) members to the Board of Directors; one director shall be appointed by the commercial Unit Owner; one director shall be appointed by the Residential Unit Owner; and, one director shall be appointed by the Parking Unit Owner. Except as may otherwise be provided in the Condominium Documents, all actions by the Board of Directors shall require the unanimous consent of all directors.

Section 3.3 of the Bylaws provides that no Unit Owner shall be appointed as a director or continue to serve as a director if the Unit Owner remains more than 60 days delinquent in the payment of bona fide financial obligations to the Council of Unit Owners.

Section 3.4 of the Bylaws provides that a director shall serve until such director's death, incapacity, removal or resignation. A director may resign at any time by giving written notice to the president or secretary of the Council of Unit Owners.

Section 3.6 of the Bylaws provides that regular meetings of the Board of Directors will be held at such time and place as shall be determined, time by time, by a majority of the Board of Directors, but not less than once per year. Special meetings of the Board of Directors may be called by president on three business days notice. At all meetings of the Board of Directors,

attendance by all directors shall be required to constitute a quorum for the transaction of business.

Section 3.8 of the Bylaws provides no directors shall receive any compensation from the Condominium for acting as a director.

Section 3.9 of the Bylaws provides that the Board of Directors shall have the power to act as agent for the Unit Owners of all the Units and for each of them to manage, control and deal with the interest of each Unit Owner in the Common Elements of the Condominium in order to permit the Board of Directors to fulfill all of its powers, obligations, rights, functions and duties.

Section 3.10 of the Bylaws provides that the directors, officers and committee members of the Condominium shall not be liable to the Unit Owners for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct, gross negligence or willful breach of a fiduciary duty.

Section 3.12 of the Bylaws provides that the Board of Directors may select, retain and terminate the services of a Condominium managing agent. The initial Condominium managing agent shall be FRIT or any of its affiliates. Any management fee paid to the Condominium managing shall not exceed the fee charged for similar services provided by management companies from comparable facilities in the Washington, D.C. Metropolitan Area. The Condominium managing agent shall perform such duties and services as the Board of Directors shall direct from time to time.

#### Article 4. Officers of the Council of Unit Owners.

Section 4.14 of the Bylaws provides that the officers of the Council of Unit Owners shall be a president, vice president, a secretary and a treasurer. The officers are to be elected by the Board of Directors. The president and vice president shall at all times be members of the Board of Directors.

Section 4.2 of the Bylaws provides that the election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Council of Unit Owners.

Section 4.3 of the Bylaws provides that each officer of the Council of Unit Owners shall hold office for one (1) year.

Section 4.4 of the Bylaws provides that the president shall at all times be a director. Each year, the office of president shall alternate among the director appointed by the Unit Owner of the Residential Unit, the director appointed by the Unit Owner of the commercial Unit, and the director appointed by the Unit Owner of the Parking Unit. The first president of the Board shall be a director appointed by Unit Owner of the Residential Unit.

Section 4.10 of the Bylaws provides that no officer shall receive compensation for any service rendered to any service rendered to the Council of Unit Owners. However, officers may be reimbursed for actual out-of-pocket expenses incurred in the performance of their official duties.

Section 4.11 of the Bylaws provides that agreements, contracts, deeds, leases, checks and other instruments of the Council of Unit Owners for expenditures or obligations in excess of \$2,000, and all checks drawn upon reserve accounts shall be executed any two persons designated by the Board of Directors. Any such instruments for expenditures of \$2,000 or less may be executed by any one person designated by the Board of Directors.

#### Article 5. Operation of the Condominium.

The fiscal year of the Council of Unit Owners shall be January 1 through December 31.

Section 5.1(b) of the Bylaws provides that the annual budget for the Condominium shall be prepared at least 45 days before the beginning of each fiscal year by the Board of Directors and submitted to the Unit Owners.

The budget shall contain an estimate of the total amount considered necessary to pay the cost of maintenance, management, operation, repair and replacement of the Common Elements and those parts of the Condominium that are the responsibility of the Council of Unit Owners to maintain, repair and replace pursuant to the Condominium Documents. The total amount of the estimated funds required from assessments shall be assessed against each Unit Owner in proportion to such Unit Owner's respective Percentage Interest and shall be due and payable monthly.

Any expenses incurred by the Council of Unit Owners at the request of a Unit Owner directly related to the maintenance, management, operation, repair and replacement of such Unit Owner's Unit shall be assessed against the Unit Owner's Unit or a lien filed against such Owner's Unit.

Within 90 days after the end of each fiscal year, the Board of Directors shall supply to all Unit Owners and to each mortgagee an itemized accounting of the General Common Expenses for the fiscal year actually incurred and paid with a tabulation of the amounts collected pursuant to the budget adopted by the Board for the fiscal year. Any payments for General Common Expenses accumulated in excess of the amount required for actual General Common Expenses and reserves shall be placed in a reserve account or credited according to each Unit Owner's Percentage Interest to the next periodic installment due from Unit Owners, or distributed to Unit Owners according to their Percentage Interest. Any net shortage shall be assessed promptly against the Unit Owners in accordance with the respective Percentage Interest and it will be payable in a lump sum or in installments as the Board may determine.

Section 5.1(d) of the Bylaws provides that the Board may also allocate an alternative percentage allocation for special maintenance expenses associated with the operation, maintenance, repair and replacement of portions of the Property described on Exhibit D to the Declaration, Reserve General Common Elements or as otherwise determined by the Board. Such items shall be such

special maintenance items and expenses shall be assessed against each Unit Owner in proportion to each Unit Owner's alternative percentage allocation, and shall be payable monthly, just as assessments.

Section 5.1(e) of the Bylaws provides that the Boards may build up and maintain reserves for the operations and replacements of the Common Elements and other property required to be maintained by the Council of Unit Owners.

Section 5.2 provides that a Unit Owners' voting rights may be suspended upon failure of a Unit Owner to pay Condominium assessments when due.

Section 5.3 of the Bylaws provides that utilities serving the Units shall be separately metered and billed to the respective Unit Owners. The cost for utilities serving the Common Elements shall be a General Common Expense.

Section 5.4 of the Bylaws provides that the Board shall take prompt action to collect any Condominium assessments due from any Unit remained unpaid for more than the applicable cure period, (i.e., 15 days). A lien for such unpaid assessments may be enforced and foreclosed as provided in the Act and the Maryland Contract Lien Act. Unpaid assessments shall bear interest at the maximum rate permitted by applicable law, not to exceed 5 percentage points above the floating prime rate of interest set forth from time to time in the money rate section of the Wall Street Journal. In addition, the Board may impose late charges not to exceed 5% of the past due assessment.

Section 5.6 of the Bylaws provides for maintenance, repair, replacement and other general expenses by the Council of Unit Owners. The Council of Unit Owners shall be responsible for the operation, maintenance, repair and replacement of the Common Elements and for any portion of the Condominium required to be maintained by the Council of Unit Owners pursuant to the Condominium Documents. Any Owner of a Unit to which a Limited Common Element is appurtenant or any Unit Owner who has benefited by a Reserve General Common Element and has been granted a revocable license for the use of the Reserve General Common Element shall have the responsibility for the routine operation, maintenance, repair and replacement of those areas and the cost associated therewith.

Section 5.7 of the Bylaws provides that each Unit Owner shall maintain, repair and replace its Unit consistent with a first class quality of the Condominium and any other improvements within the Rockville Town Square project. "First Class" is defined in the Condominium Documents as a quality, condition, nature, operation that is consistent with the initial construction and comparable to the quality, condition, nature, operation found in other mixed-use developments in the Washington, DC Metropolitan Area of comparable age, quality and construction to the Property, considering normal wear and tear over the life of the improvements, and includes inspection, testing, care, maintenance, operation, repair, alteration, additions, improvements, remodeling, restoration, renovation and replacement of the exterior of a Unit in accordance with the standards and requirements set forth in the Declaration and the rules.

## Article 6. Mortgages.

Section 6.1 of the Bylaws provides that each Unit Owner may mortgage, encumber or otherwise grant a security interest in its Unit. The Unit Owner must notify the Board of Directors of the name and address of any mortgagee. The Board of Directors, when giving a notice to any Unit Owner of a default in payment of an assessment or other default which remains uncured, shall simultaneously send a copy of such notice to the mortgagee of such Unit. The Board of Directors shall also give notice of all mortgagees of any material changes to the Condominium Documents or any other notices reasonably required by a mortgagee. The Council of Unit Owners cannot do the following without the unanimous consent of mortgagees: change any Unit's Percentage Interest, except as provided in the act; partition, subdivide, abandon or encumber, sell or transfer the Common Elements of the Condominium (except for the granting of easements pursuant to the act and the Condominium Documents); except following destruction or condemnation, terminate the Condominium; modify the method of determining or collecting assessments; use insurance proceeds for losses to the Condominium for any purpose other than repair; or make any amendment or modification to the Condominium Documents impairing or affecting the rights, priorities or remedies of a mortgagee. If a mortgagee is notified of any proposed amendment to the Condominium Documents and the mortgagee fails to respond within 30 days of receipt of such notice, then such mortgagee shall be conclusively deemed to have approved the proposed amendment or other matter for which the mortgagee was providing notice.

## Article 7. Compliance and Default.

Section 7.1 of the Bylaws provides that each Unit Owner shall be governed by and shall comply with the Act and the Condominium Documents. In addition, each Unit Owner shall be liable to the Council of Unit Owners and to each other, as the case may be, for the expense of all maintenance, repair or replacement rendered necessary by its acts or omissions, and those of its tenants, subtenants, and invitees, licensees, employees, contractors and agents. In any proceedings arising out of any alleged default by a Unit Owner, the Council of Unit Owners shall be entitled to recover the cost of such proceedings and such reasonable attorney's fees.

Section 7.2(c)(i) of the Bylaws provides that with respect to non-monetary violations, the non-defaulting Unit Owner or Board of Directors, as the case may be, may enter a Unit or Limited Common Element appurtenant to such Unit where a breach may exist and abate and remove at the expense of the defaulting Unit Owner, any structure, thing or condition that may be in violation of the Condominium Documents. Before exercising such right, the defaulting Unit Owner shall be provided with notice and an opportunity to cure the default within 20 days after receipt of such notice. The exception is in the case of emergency situations where notice is not required.

Section 7.2( c)(ii) of the Bylaws provides that a defaulting Unit Owner shall cure a monetary default within 15 days after written notice of such default. If the default remains uncured beyond the 15-day cure period, then the party entitled to performance of the monetary obligation shall be entitled to a lien against the defaulting Unit Owner's Unit.

Section 7.3 of the Bylaws provides that the total annual assessment of each Unit Owner for General Common Expenses, special maintenances and any special assessments will be declared to be a lien levied against the Unit of each Unit Owner as provided in the Maryland Condominium Act.

Article 8. Amendments to Bylaws. Article 8 provides that the Bylaws may be modified or amended only by the unanimous express written consent of the Unit Owners.

Article 9. Miscellaneous. – Article 9 provides for miscellaneous provisions to the Declaration. Note that the Bylaws will be attached to the Declaration as Exhibit B and will be recorded when the Declaration is recorded.

#### **IV. Summary of the Rules and Regulations.**

1. Parking. The Parking Unit Owner shall keep the Parking Unit open 24 days a day, seven days a week, 365 days per year for parking use by the Parking Beneficiaries. The Parking Unit Owner shall cause the Parking Unit to be maintained in a good and workmanlike manner in accordance with applicable law and the maintenance standards attached as Exhibit A to the Rules.

No cleaning, maintenance, or repair activities within the Parking Unit that would generate noise or vibration which would interfere with the safety, comfort or convenience of any occupant of any other Unit shall occur between the hours of 11 pm and 6 am. Routine cleaning of the Parking Unit shall be performed between the hours of 6 am and 11 pm.

For Blocks 1 and 2, the parking garage shall contain the parking garage operated by the City of Rockville as well as the residential parking facility to be owned and operated by RTS.

For Blocks 1 and 2, if at any time, the Residential Unit Owner shall determine that a condition exists within the parking that affects access to or from the residential parking facility, and such condition requires immediate maintenance or repair, then the residential Unit Owner, after giving notice to the Parking Unit Owner, shall have the right to immediately perform such maintenance and/or repair at the expense of the Parking unit Owner.

The Parking Unit Owner shall undertake commercially reasonable efforts to discourage loitering about the Parking Unit.

2. Loading and Delivery. Unit Owners shall permit deliveries, loading, and unloading of merchandise only during the hours of 7 am to 10 pm. For Blocks 1 and 2, however, such limitations shall not apply to the grocery store tenant. Also for Blocks 1 and 2, with respect to the loading dock located on Block 1, the loading dock doors will remain closed at all times except during deliveries. All deliveries shall be supervised by the Unit Owner accepting such delivery. Violators shall be subject to a fine that may be imposed by the City in the exercise of the City's police powers, which is anticipated to be approximately \$100 per violation.

3. Use of Outdoor Areas. The Commercial Unit Owner may permit any restaurant operator to use sidewalk space adjoining or within any such restaurant or café sidewalk areas as an outdoor dining area. The Commercial Unit Owner shall have priority over any other Unit Owner to use such sidewalk areas for an outdoor dining area. Outdoor dining shall be permitted during the hours of 7 am to 12 a.m. of the next day on Sundays through Wednesdays, and during the hours of 7 am until 2 am of the next day on Thursdays, Fridays, Saturdays and holidays and evenings prior to holidays. When the Commercial Unit Owner is using the outdoor dining area, then the responsibility for the maintenance, cleaning and repair and the cost for same shall be that of the Commercial Unit Owner. If the outdoor dining area is not used by the Commercial Unit Owner, then the routine maintenance and operation and the cost for same shall be a general common expense shared by all Unit Owners. In addition, the Commercial Unit Owner may place chairs, tables and benches within the outdoor areas for use by guests and invitees and other permittees.

Section 3.3 of the Rules provides that the Commercial Unit Owner may use, on a periodic basis, the public outdoor areas, for special activities and events so long as such activities and events are conducted in a safe and orderly manner and are in compliance with all applicable laws.

Section 3.4 of the Rules provides that the Commercial Unit Owner has the right to permit eight (8) permanent kiosks and two (2) movable kiosks or carts within the entire project for the sale of goods and services. The residential Unit Owner has the right to use one of the kiosks or carts for the distribution of information regarding the rental or sales of residential Units within the Property.

4. Hours of Operation, Construction Activities, Maintenance, Appearance and Refuse. Each Unit Owner is responsible for its trash disposal. Signage is subject to applicable laws. The approved signage criteria will be attached to the Rules as Exhibit C. No exterior work or construction activities will occur during the periods of November 1 through January 15 if the work would be disruptive to the Commercial Unit.

5. Noise, Odors and Lighting. Each Unit Owner agrees to keep its mechanical and other apparatus located within its Units free from vibration and noise that may be transmitted beyond the improvements located on such Unit. No Unit Owner shall cause or permit obnoxious food odors or other objectionable odors to emanate from its respective Unit. Each Unit Owner agrees to abide by the lighting plan submitted to the City of Rockville and the lighting criteria that been or shall be jointly prepared by the Unit Owners.

6.5. Enforcement, Modification and Amendment of the Rules. The Rules are part of the Condominium Documents and are enforceable just as the Condominium Documents. The Unit Owners, Council of Unit Owners and the Board of Directors have all remedies and recourse to enforce the Rules as set forth in the Declaration for the enforcement of the Condominium Documents. The Rules cannot be terminated, canceled, changed or amended without the written consent or approval of each Unit Owner affected by the termination, cancellation, change or amendment to any Rule. The Rules will not be recorded in the Land Records.



Exhibits.

Exhibit A-Parking Unit Maintenance, Cleaning and Inspection Specifications

Exhibit B-Outdoor Area

Exhibit C-Sign Criteria

[End of Executive Summary]

**DECLARATION  
FOR  
ROCKVILLE TOWN SQUARE BLOCKS 1 AND 2 CONDOMINIUM**

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## EXHIBITS

Exhibit "A"	Legal Description of the Property
Exhibit "B"	Bylaws of the Condominium
Exhibit "C"	Condominium Plats
Exhibit "D"	Schedule of Percentage Interests and Votes
Exhibit "E"	Schedule of Alternative Percentage Allocations, Special Maintenance Items and Special Maintenance Expenses

## Declaration for

### Rockville Town Square Blocks 1 and 2 Condominium

THIS DECLARATION FOR ROCKVILLE TOWN SQUARE BLOCKS 1 AND 2 CONDOMINIUM (the "**Declaration**") is made this \_\_\_\_ day of \_\_\_\_\_, 2005 by RTS RESIDENTIAL BLOCK 1/2, LLC, a Delaware limited liability company ("**Declarant**"), as follows:

## RECITALS

**A.** Declarant is the owner of the fee simple interest in certain land, and all easements, rights and appurtenances belonging thereto located in Montgomery County, Maryland, and more particularly described in Exhibit "A" to this Declaration. The land described on Exhibit "A" and all easements, rights and appurtenances belonging thereto, together with all improvements now or hereafter erected thereon are hereinafter collectively referred to as the "**Property**."

**B.** Declarant desires to subject the Property to a condominium regime pursuant to Title 11 of the Real Property Article of the Annotated Code of Maryland in effect as of the date hereof, as amended.

**C.** Prior to the recordation of this Declaration among the Land Records, there has been filed for record among the Land Records certain condominium plats entitled "Rockville Town Square Blocks 1 and 2 Condominium" (hereinafter referred to as the "**Condominium Plats**"), which Condominium Plats (consisting of \_\_\_\_ (\_\_\_\_) sheets) are recorded among the Land Records at Plat Nos. \_\_\_\_\_ and \_\_\_\_\_. A reduced copy of the Condominium Plats is attached as Exhibit "C" to this Declaration.

NOW, THEREFORE, Declarant hereby subjects the Property to the provisions of the Maryland Condominium Act and this Declaration.

## ARTICLE 1 DEFINITIONS

Unless the context shall plainly require otherwise, the following terms when used in this Declaration and any of the exhibits attached to this Declaration shall have the following meanings.

**Section 1.1.** "*Alternative Percentage Allocation*" is defined in Section 3.8 of this Declaration.

**Section 1.2.** "*Annual Assessment*" means the share of the anticipated General Common Expenses and Special Maintenance Expenses allocable to a Unit for each fiscal year of the Council of Unit Owners, as reflected in the budget for that year.

**Section 1.3.** "*Applicable Law*" means all laws, rules, statutes, codes, acts, ordinances, judgments, decrees, injunctions, permits, licenses, authorizations, directives, requirements or

regulations of all federal, state, county, city and other governments, departments, commissions, boards, courts, authorities, officials, and offices applicable to the Property, the Condominium, the Units, the Council of Unit Owners, the Condominium Documents, and any Unit Owner.

**Section 1.4. “Base Building”** is defined in Section 9.1(a)(i) of this Declaration.

**Section 1.5. “Benefited Owner”** is defined in Section 3.5 of this Declaration.

**Section 1.6. “Board of Directors” or “Board”** means the administrative body elected in accordance with the Bylaws to act for the Council of Unit Owners in governing the Condominium.

**Section 1.7. “Building” or “Buildings”** means the Buildings shown on the Condominium Plats, including the improvements constructed or to be constructed within each Unit now or hereafter.

**Section 1.8. “Burdened Owner”** is defined in Section 3.6 of this Declaration.

**Section 1.9. “Bylaws”** means the Bylaws attached to this Declaration as Exhibit “B”, as such Bylaws may be amended from time to time in accordance with the terms of the Bylaws.

**Section 1.10. “Commercial Unit”** means the Unit designated as such on the Condominium Plats.

**Section 1.11. “Common Elements”** means all of the Property other than the Units, and includes the General Common Elements and the Limited Common Elements.

**Section 1.12. “Common Profits”** means any profits realized by the Council of Unit Owners.

**Section 1.13. “Condominium”** means the condominium regime created by the recordation of this Declaration, the Bylaws, and the Condominium Plats, as each of the same may be amended from time to time.

**Section 1.14. “Condominium Documents”** means collectively, this Declaration, the Bylaws, the Condominium Plats, and the Rules (whether or not such Rules are recorded in the Land Records), as each of the same may be amended from time to time.

**Section 1.15. “Condominium Managing Agent”** means a professional managing agent employed by the Council of Unit Owners to perform such duties and services as the Board of Directors shall authorize in conformance with the Maryland Condominium Act, this Declaration, and the Bylaws.

**Section 1.16. “Condominium Plats”** means the plats referred to in Recital C of this Declaration, as such plats may be amended from time to time in accordance with the terms of the Condominium Documents.



**Section 1.17. "Council of Unit Owners"** means the legal entity comprised of all Unit Owners that governs the Condominium pursuant to the Condominium Documents and the Maryland Condominium Act.

**Section 1.18. "County"** means Montgomery County, Maryland.

**Section 1.19. "Declaration"** means this document and all exhibits attached hereto, as the same may be amended from time to time in accordance with the terms hereof.

**Section 1.20. "Director"** means any person appointed to the Board of Directors in accordance with the Bylaws.

**Section 1.21. "First Class"** means a quality, condition, nature or operation that is consistent with the initial construction and comparable to the quality, condition, nature or operation found in other mixed-use developments in the Washington, D.C. metropolitan area of comparable age, quality and construction to the Property, considering normal wear and tear over the life of the improvements, and includes inspection, testing, care, maintenance, operation, repair, alteration, additions, improvements, remodeling, restoration, renovation and replacement of the exterior of a Unit in accordance with the standards and requirements set forth in this Declaration and the Rules. Subject to the Rules and the provisions of Article 8 of this Declaration, "First Class" is not intended to apply to the quality of tenants, tenant mix, tenant selection or leasing program for the Commercial Unit or Residential Unit, nor is "First Class" intended to apply to the Parking Unit nor does it apply to the aesthetic or cosmetic components of the interior of a Unit.

**Section 1.22. "General Common Elements"** is defined in Section 2.5(b) of this Declaration.

**Section 1.23. "General Common Expenses"** means any expenses associated with (i) the maintenance, operation, inspection, administration, repair, or replacement of the General Common Elements, except to the extent specifically provided otherwise in this Declaration or the Bylaws, (ii) any insurance premiums payable with respect to insurance required to be carried by the Council of Unit Owners pursuant to Section 9.1(a) of this Declaration, and (iii) any amounts described as General Common Expenses in Section 10.3(d) of this Declaration. The General Common Expenses shall also include all reasonable expenses designated as such in the budget adopted annually by the Board of Directors in accordance with Section 5.1 of the Bylaws. Special Maintenance Expenses, as described in Section 3.8 of this Declaration, are not General Common Expenses. The Board of Directors shall allocate among the Unit Owners any expenses paid by or on behalf of the Council of Unit Owners that are neither General Common Expenses nor Special Maintenance Expenses.

**Section 1.24. "Improvements and Betterments"** is defined in Section 9.1(a)(i) of this Declaration.

**Section 1.25. "Indemnitee"** is defined in Article 7 of this Declaration.

**Section 1.26. "Indemnitor"** is defined in Article 7 of this Declaration.

**Section 1.27. "Insurance Trustee"** means the Mortgagee of the Residential Unit, or if there is no Mortgagee of the Residential Unit or if the Mortgagee of the Residential Unit declines to act as the Insurance Trustee, then a bank, insurance company, union, pension trust, profit or retirement fund, Real Estate Investment Trust, or similar institutional lender with substantial construction experience selected with the consent of all members of the Board of Directors, to be the loss payee of the proceeds of the insurance described in Sections 9.1(a)(i), (iv) and (v) of this Declaration.

**Section 1.28. "Land Records"** means the Land Records of Montgomery County, Maryland.

**Section 1.29. "License Agreement"** is defined in Section 2.1 of this Declaration.

**Section 1.30. "Limited Common Elements"** is defined in Section 2.5(d) of this Declaration.

**Section 1.31. "Maryland Condominium Act"** means and refers to Title 11 of the Real Property Article of the Annotated Code of Maryland in effect as of the date hereof, as the same has been or may be amended from time to time.

**Section 1.32. "Mortgage"** means any deed of trust, mortgage, and other security instrument recorded among the Land Records constituting a lien against all or any portion of a Unit.

**Section 1.33. "Mortgagee"** means the holder of or beneficiary under a Mortgage.

**Section 1.34. "Notice to Proceed"** is defined in Section 11.14(a) of this Declaration.

**Section 1.35. "Officer"** means any person holding office in the Council of Unit Owners pursuant to Article 4 of the Bylaws.

**Section 1.36. "Parking Beneficiaries"** is defined in Section 8.2(a) of this Declaration.

**Section 1.37. "Parking Unit"** means the Unit designated as such on the Condominium Plats.

**Section 1.38. "Percentage Interest"** means the undivided percentage ownership interest appurtenant to each Unit with respect to the General Common Elements and the Common Profits, and also represents the Unit Owner's percentage liability for General Common Expenses (other than Special Maintenance Expenses), as set forth in Exhibit "D" to this Declaration.

**Section 1.39. "Performing Party"** is defined in Section 11.13 of this Declaration.

**Section 1.40. "President"** means the President of the Council of Unit Owners elected in accordance with Article 4 of the Bylaws.

**Section 1.41. "Project"** means the Rockville Town Square project in Rockville, Maryland.

**Section 1.42.** *“Property”* is defined in Recital A of this Declaration.

**Section 1.43.** *“Reserved General Common Elements”* is defined in Section 2.5(c).

**Section 1.44.** *“Restricted Areas”* is defined in Section 3.2(b) of this Declaration.

**Section 1.45.** *“Residential Unit”* means the Unit designated as such on the Condominium Plats.

**Section 1.46.** *“Rules”* means such reasonable rules and regulations adopted and amended from time to time by the Board of Directors, in accordance with Section 4.1 of this Declaration and Section 3.1(f) of the Bylaws, to govern the use and operation of the Condominium and that are consistent with the Maryland Condominium Act, this Declaration, and the Bylaws.

**Section 1.47.** *“Second Notice”* is defined in Section 11.14(b) of this Declaration.

**Section 1.48.** *“Secretary”* means the Secretary of the Council of Unit Owners elected in accordance with Article 4 of the Bylaws.

**Section 1.49.** *“Security System”* is defined in Article 6 of this Declaration.

**Section 1.50.** *“Special Assessment”* means the share of any General Common Expenses allocable to a Unit that is in addition to the Annual Assessment, including, but not limited to, those imposed pursuant to Section 7.3 of the Bylaws.

**Section 1.51.** *“Special Maintenance Expenses”* is defined in Section 3.8 of this Declaration.

**Section 1.52.** *“Special Maintenance Items”* is defined in Section 3.8 of this Declaration.

**Section 1.53.** *“Sub-Condominium”* is defined in Section 11.15(a) of this Declaration.

**Section 1.54.** *“Sub-Unit”* is defined in Section 11.15(b) of this Declaration.

**Section 1.55.** *“Taxes”* is defined in Section 11.4 of this Declaration.

**Section 1.56.** *“Treasurer”* means the Treasurer of the Council of Unit Owners elected in accordance with Article 4 of the Bylaws.

**Section 1.57.** *“Unit”* means the three dimensional contiguous or non-contiguous areas, as described in this Declaration and as shown on the Condominium Plats, and includes all improvements contained or to be contained within such areas unless designated in this Declaration or on the Condominium Plats as a General Common Element or Limited Common Element. The term “Unit” shall mean the Commercial Unit, Residential Unit and Parking Unit, as the context may require.

**Section 1.58. "Unit Owner"** or "Owner" means any natural person, group of persons, corporation, partnership, limited liability company, association, trust, or other legal entity, or any combination of such entities, legally capable of holding title to real property, that owns fee simple title to a Unit; *provided, however*, that any person, group of persons, corporation, partnership, limited liability company, association, trust, or other legal entity, or any combination of such entities, that holds such an interest solely as security for the performance of an obligation shall not be a Unit Owner solely by reason of that interest.

**Section 1.59. "Vice President"** means the Vice President of the Council of Unit Owners elected in accordance with Article 4 of the Bylaws.

## **ARTICLE 2**

### **CREATION OF THE CONDOMINIUM REGIME**

**Section 2.1. Name of Condominium.** This condominium shall be known as "**Rockville Town Square Blocks 1 and 2 Condominium.**" The name of the condominium may be used by all Unit Owners in connection with the use, operation and marketing of all or any portion of their respective Units subject to and in conformity with the terms of a certain license agreement that has been entered into among the Declarant, Federal Realty Investment Trust and the Mayor and Council of Rockville, Maryland, entitled "Trademarks License Agreement" and dated of even date hereof (the "**License Agreement**"). None of the Unit Owners shall use the same or similar name for another project except in conformity with the terms of the License Agreement.

**Section 2.2. Submission of Property to the Maryland Condominium Act.**

(a) The Property is hereby subjected to, and shall hereafter be held, conveyed, divided, subdivided, leased, rented, occupied, improved, and encumbered in accordance with the Maryland Condominium Act and the covenants, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges, and liens set forth in this Declaration and the Bylaws, all of which are declared and agreed to be in aid of a plan for the division of the Property into a condominium pursuant to the Maryland Condominium Act. By the recordation of this Declaration among the Land Records and except as may be otherwise provided in this Declaration or the Bylaws (i) the Council of Unit Owners hereby assumes all responsibilities and duties imposed upon it by the Condominium Documents including all responsibility, and duty for the care, operation, repair, maintenance and, where required, replacement of the General Common Elements in accordance with the Condominium Documents and (ii) each Unit Owner hereby assumes all responsibilities and duties imposed upon it by the Condominium Documents including all responsibility and duty for the care, operation, repair, maintenance and, where required, replacement of its (a) respective Unit and (b) any Limited Common Element appurtenant thereto based upon its Alternative Percentage Allocation in accordance with the Condominium Documents, subject, however, to the rights and obligations the Council of Unit Owners may have pursuant to the Condominium Documents.

(b) All present and future Unit Owners shall, and shall use commercially reasonable efforts to cause their respective tenants, subtenants, licensees, employees, contractors and agents, to comply with the provisions of the Condominium Documents. The acceptance of a

deed of conveyance or other acquisition of title to a Unit, the entering into of a lease, or the entering into occupancy of any Unit shall constitute an agreement that the provisions of the Condominium Documents are accepted and ratified by such Unit Owner, tenant, or occupant, and all of such provisions shall be deemed and taken to be enforceable equitable servitudes and covenants running with the land and shall automatically bind any person or entity having at any time any right, title, interest or estate in such Unit, including, without limitation, all Unit Owners and Mortgagees, as though such provisions were recited and stipulated at length in each deed, lease or other instrument

**Section 2.3. Units; Dimensions of Units.** The dimensions of the Units are as shown on the Condominium Plats, as amended from time to time. The perimeter and vertical boundaries of each Unit shall include the exterior walls, windows, doors and other improvements and such vertical boundaries shall consist of the vertical planes extended to intersect with each other and with the upper and lower horizontal boundaries of the Unit, as indicated on the Condominium Plats to the extent possible. The upper and lower horizontal boundaries of each Unit shall be horizontal planes extended to intersect the vertical boundaries of the Unit, as indicated on the Condominium Plats. The elevations of such horizontal planes shall be as described on the Condominium Plats. It is anticipated that buildings and other improvements will be constructed on the Property after the recordation of this Declaration and the initial Condominium Plats. Each Unit Owner shall cooperate in the preparation and recordation of an amendment or amendments to the Condominium Plats and any other instruments as may be reasonably necessary to reflect changes in Unit boundaries and the Common Elements based on the as-built location of buildings and other improvements within the Property.

**Section 2.4. Units; Percentage Interests; Votes.** Attached to and made part of this Declaration as Exhibit "D" is a list of the Units, the Percentage Interest of each Unit in the Common Elements, General Common Expenses and Common Profits, and the vote appurtenant to each Unit.

**Section 2.5. Common Elements.**

(a) **Ownership of General Common Elements.** Each Unit Owner shall be the owner of an undivided interest as a tenant-in-common in the General Common Elements, in accordance with the Percentage Interest of each Unit Owner.

(b) **General Common Elements.** The "General Common Elements" consist of the following specific areas and structures:

(i) The Property except for the Units and any Limited Common Elements;

(ii) All areas, improvements, and facilities designated as General Common Elements on the Condominium Plats; and

(iii) Unless otherwise provided for in this Declaration, on the Condominium Plats or otherwise designated or defined as part of the Units or Limited Common Elements, the General Common Elements include, but are not limited to, (a) footings, foundations, columns, girders, beams and similar supports for the improvements benefiting all

Units erected or to be erected within the Property, (b) the service areas for trash, transformers and deliveries, (c) all of the pipes, cables, flues, wiring, ducts, conduits, public utility lines and other apparatus relating to any water and air distribution, power, gas, light, telephone, telecommunication, sewer, plumbing, air conditioning, heating and utility systems serving all of the Units, (d) exterior walls and facings of the Buildings and any partitions separating Units, (e) stairwells and stairs, (f) elevators and elevator shafts, (h) mechanical and maintenance rooms, (g) entrance doors and windows, (h) central loading and delivery areas, and (i) all apparatus and installations existing or hereinafter constructed on the Property for the common use, maintenance or safety of the Property.

(c) **Reserved General Common Elements.** Subject to the Public Access Easement(s) and Public Amenity Easements with the City of Rockville, Maryland, the Board of Directors shall have the power in its discretion from time to time to grant revocable licenses in designated General Common Elements to any Unit Owner(s) at no charge or to establish a reasonable charge and terms for the use and maintenance thereof by such Unit Owner(s) (which charge shall be deemed an assessment payable in accordance with the Section 5.1(c) of the Bylaws or Special Maintenance Expense payable in accordance with Section 5.1(d) of the Bylaws, as determined by the Board of Directors). Such use and maintenance shall be in accordance with Applicable Law and the Condominium Documents. The General Common Elements or portions thereof so designated shall be referred to as a “**Reserved General Common Elements.**” By way of example, Reserved General Common Elements may include, but are not limited to, pop-out storefronts, Outdoor Dining Areas described in Section 3.2.1 of the Rules, and kiosks described in Section 3.4 of the Rules. Without limiting the generality of the foregoing, the Commercial Unit Owner shall have the right, from time to time, to designate portions of the General Common Elements adjacent to the Commercial Unit or within a reasonable proximity of the Commercial Unit as Reserved General Common Elements to be utilized by the Commercial Unit Owner, its tenants, subtenants, licensees, contractors, agents, employees, invitees and customers, to the extent such designation is reasonably connected to the use and operation of all or a portion of the Commercial Unit; subject, however, to Applicable Law and the prior consent of the Board of Directors that shall be granted unless such use has or shall have an adverse and material impact on another Unit Owner. The Commercial Unit Owner shall have priority over the other Unit Owners to use such Reserved General Common Elements for outdoor dining and seating. Such areas designated by the Board of Directors shall not be construed as a sale or other disposition of the General Common Elements. The Unit Owner who is granted a license to use a Reserved General Common Element shall be responsible for the care, operation, cleaning, maintenance and repair of such Reserved General Common Element during the term of such license or arising out of the result of such use during the term of such license, unless otherwise agreed by the Board of Directors.

(d) **Limited Common Elements.** The “**Limited Common Elements**” consist of those portions of the Common Elements that are (a) designated as Limited Common Elements on the Condominium Plats or (b) a part of the Common Elements that serve less than all of the Units and are determined from time to time by the Board of Directors to be Limited Common Elements. Any such Limited Common Elements shall be reserved for the exclusive use of the Unit Owner(s) of the Unit(s) to which they are declared to be appurtenant by appropriate designation in the Condominium Documents or by the Board of Directors, subject to any easements and other rights as may be reserved or granted by the Condominium Documents

or as otherwise established from time to time by the Board of Directors. Each Unit to which a Limited Common Element has been assigned shall be the owner of an undivided interest as a tenant-in-common in such Limited Common Element in accordance with such Unit Owner's Alternative Percentage Allocation attributable thereto. Any decisions concerning the use, operation, maintenance or repair of a Limited Common Element appurtenant to one or more Units shall be solely decided by the Unit Owner(s) to which such Limited Common Element has been assigned based upon such Unit Owner(s) Alternative Percentage Allocation.

(e) **Delegation of Use.** Each Unit Owner may delegate its right to use and enjoy the General Common Elements and any Limited Common Elements appurtenant to such Unit to such Unit Owner's employees, guests, agents, customers, licensees, invitees, and tenants, and to such other persons as may be permitted by the Board of Directors. Each person having the right to the use and enjoyment of the Common Elements, including, without limitation, such Unit Owner's employees, guests, agents, customers, licenses, invitees and tenants, shall comply with the Condominium Documents and such Unit Owner shall use reasonable efforts to cause such third parties to comply with the Condominium Documents.

**Section 2.6. Unit Subdivision.** Subject to Section 11.15 below, any Unit Owner may subdivide its Unit into two (2) or more units in accordance with Section 11-107(d) of the Maryland Condominium Act. It shall be a condition of the subdivision of a Unit that the original Percentage Interest, Alternative Percentage Allocation and the vote appurtenant to such Unit shall be allocated between or among the resulting subdivided units and that such subdivision does not have a material and adverse impact on the Condominium or other Unit Owners.

**Section 2.7. No Severance of Ownership.** No Unit Owner shall execute any lease, Mortgage, bring an action in partition, or otherwise transfer, convey (with or without consideration), or encumber its Unit without including therein the appurtenant Common Elements. The intention of this Section is to prevent any severance of the combined ownership interests in a Unit and its appurtenant Common Elements and shall not otherwise preclude the transfer, conveyance, lease or mortgage of all or a part of a Unit. Any lease, Mortgage or other instrument purporting to affect one or more of such interests, without including all such interests, shall be conclusively deemed and taken to include the interest or interests so omitted, even though the latter shall not be expressly mentioned or described therein. No part of the appurtenant Common Elements of any Unit may be sold, conveyed, transferred, or otherwise disposed of, except as part of a sale, conveyance (with or without consideration), transfer, or other disposition of the Unit to which such interests are appurtenant, or as part of a sale, conveyance (with or without consideration), transfer, or other disposition of such part of the appurtenant Common Elements of all Units. Any conveyance, encumbrance, sale (including, but not limited to, a judicial sale), or other transfer of an appurtenant Common Element in violation of the preceding sentence shall be void.

**Section 2.8. Party Walls and Party Floors.**

(a) The party walls and party floors on portions of the dividing lines between two or more Units or between a Unit and a portion of the Common Elements shall be governed by this Section 2.8 and, to the extent not inconsistent with the provisions of this Section, by Applicable Law or other applicable agreements regarding party walls and party floors and

liability for property damage, personal injury, or death due to negligence, willful or intentional acts or omissions.

(b) Except as otherwise provided in the Condominium Documents, the cost of reasonable repair, maintenance and replacement of a party wall or party floor shall be shared on an equal basis by the Unit Owners that make use of the wall or floor.

### **ARTICLE 3**

#### **EASEMENTS; COOPERATION IN DEVELOPMENT;**

#### **ALTERNATIVE PERCENTAGE ALLOCATION**

**Section 3.1. General Common Elements, Utility and Structural Easements.** Each Unit Owner shall have the benefit of an easement in common with all other Unit Owners to use the General Common Elements, subject to the right of the Board of Directors to designate portions of the General Common Elements as Reserved General Common Elements pursuant to Section 2.5(c) above. Each Unit shall be burdened by an easement in favor of all other Unit Owners and Units for the use of the General Common Elements serving such other Units as now or hereafter located in the burdened Unit. Every portion of the Property that contributes to the structural support of other Units or the Common Elements shall be burdened with an easement of structural support for the benefit of such other Units and Common Elements. Each Unit Owner shall also have the benefit of an easement to use, for their intended purposes, all pipes, wires, ducts, flues, cables, conduits, utility lines, and other similar materials and infrastructure that, upon the completion of the construction of the improvements on the Property or any replacements thereof, are located within another Unit or a Common Element and serving the Unit of the benefited Unit Owner.

#### **Section 3.2. Other Easements.**

(a) **Maintenance and Repair by Council of Unit Owners and by the Unit Owners.** The Council of Unit Owners shall have an easement in, over, under, through or across the Property for the inspection, operation, maintenance, repair, improvement, or replacement of the Common Elements, and each Unit Owner shall have an easement in, over, under, through or across the Property for the inspection, operation, maintenance, repair, improvement or replacement of the Limited Common Elements, if any, benefiting such Owner's Unit. Subject to Section 3.5 below, the Council of Unit Owners shall have an irrevocable right (but not the obligation) and an easement to enter the Units to make repairs to the Units when the repairs appear reasonably necessary to prevent damage to the Common Elements, prevent injury or death to a person or to reconstruct the Units in the event of a casualty or if otherwise required to do so by the Condominium Documents. All repairs shall be performed in accordance with Applicable Law and in a good and workmanlike manner consistent with prevailing industry standards for First Class properties.

(b) **Access.** Each Unit Owner shall have the unrestricted right of ingress and egress through the General Common Elements to its Unit. Each Unit Owner shall have an easement across those portions of the General Common Elements designed for vehicular and pedestrian ingress and egress for access to and from their respective Units and to and from public roads adjacent to the Property. No walls, fences, barriers or other obstructions that unreasonably



interfere with or limit the free flow of vehicular and pedestrian traffic to and from the Units, or that otherwise unreasonably interferes with the activities of the Unit Owners, shall be erected or allowed to remain within such General Common Elements, without the prior written consent of the Unit Owner of the affected Unit, which consent may be granted or withheld in its sole and absolute discretion. Each Unit Owner shall have a right of access through other Units to the extent reasonably necessary to gain access to the General Common Elements or to any other portions of the Condominium that serve or benefit such Unit. The Parking Beneficiaries shall have an unrestricted easement through those portions of the Parking Unit designated for vehicular and pedestrian ingress, egress, access and vehicular parking within the Parking Unit. By acceptance of a deed of conveyance, articles of transfer, or other applicable means of conveying record title to the Unit, each Unit Owner thereby grants a reasonable right of access to the Unit to the Board of Directors, the Condominium Managing Agent, other Unit Owners and any other persons authorized by the Board or the Condominium Managing Agent, to allow for the exercise of their respective rights, powers and responsibilities under the Condominium Documents including, without limitation, (a) making inspections, (b) correcting any condition originating in the Unit or in a Common Element to which access is obtained through the Unit or threatening the Common Elements, (c) performing installations, alterations or repairs to the Common Elements, or otherwise as reasonably deemed necessary. Any exercise of the rights of access pursuant to this Section shall be made after a prior request for entry is made and any such entry shall be made at a time reasonably convenient to the Unit Owner and, if requested by the Unit Owner, in the company of a representative of such Unit Owner. In all events, any such entry shall be exercised in a commercially reasonable manner so as to minimize inconvenience or disruption to the activities being conducted in the Unit. Except for areas within any Unit that are designated as **"Restricted Areas"** by written notice from the Unit Owner to the Condominium Managing Agent, in case of an emergency, such right of entry shall be immediate, whether or not a representative of the Unit Owner is present or a prior request was made. Restricted Areas in any Unit may not be accessed at any time unless a representative of the respective Unit Owner is present or the Unit Owner has otherwise consented to such access. Examples of Restricted Areas may include jewelry stores, bank vaults, cash handling areas, pharmacy inventory storage and display areas and similar areas containing property to which access must reasonably be limited for purposes of loss prevention, inventory control, confidentiality or compliance with Applicable Law. Any Unit Owner that designates any Restricted Areas shall provide the Condominium Management Agent and the other Unit Owners with the name(s) and phone number(s), and email address(es) of one or more agents or representatives who can readily be contacted if access to a Restricted Area is required. Units or portions thereof may not be designated as a Restricted Area unless there is a commercially reasonable and legitimate basis for doing so.

(c) **Construction, Development and Maintenance.** During the initial construction of the improvements on the Property, the Property shall be subject to an easement, for the benefit of each Unit Owner, the Council of Unit Owners and their respective agents for the purpose of access, the storage of building supplies and materials and equipment and for any and all purposes reasonably related to the initial development and construction of the Units and the Common Elements. Subsequent to substantial completion of the building shell for the Commercial Unit and Residential Unit, the Property shall be subject to an easement for the benefit of each Unit Owner, the Council of Unit Owners and their agents for purposes reasonably related to the completion, repair, replacement and maintenance of the Units and the Common Elements. To the extent it is feasible to do so, building supplies, materials and equipment shall

be stored on the Common Elements rather than within a Unit of a Unit Owner not involved in the construction, reconstruction, improvement, repair or maintenance. In the exercise of any rights under this Section 3.2(c), there shall be no unreasonable and material interference with the use of any Unit or with the Common Elements for the purposes for which each is reasonably intended. Any person or entity exercising any rights under this Section 3.2(c) shall be obligated to promptly repair, at his/its own expense, any damage caused by the exercise of such rights and to restore promptly, to the extent practicable, any damaged real or personal property to the condition of such property prior to the exercise of such rights.

(d) **Utility Access.** To the extent access to utility, water and drainage systems serving any portion of the Property cannot be reasonably obtained through the General Common Elements, reasonable easements are hereby established through the Units and the Limited Common Elements to provide such use access. The Unit Owner seeking access to the utility systems pursuant to this subsection shall be responsible for restoring the areas through which access was obtained to the condition existing immediately prior to such access and shall be responsible for all costs associated with such access and restoration. The use of these utility easements shall not unreasonably interfere with or burden the use of the Unit in question.

(e) **Emergency Ingress and Egress.** To the extent emergency means of ingress and egress are not otherwise available through the General Common Elements, the Limited Common Elements and Units shall be subject to an easement for the benefit of the Unit Owners for emergency ingress and egress to and from their respective Units.

(f) **Unit Owners' Right to Grant Easements.** Except to the extent not prohibited or restricted by the Condominium Documents or the Maryland Condominium Act, the Unit Owners may grant easements through the General Common Elements and accept easements benefiting any portion of the Condominium, including easements for signage. Such grants shall require the approval of the Board of Directors, such approval not to be unreasonably withheld, conditioned or delayed.

(g) **Easement for Equipment.** The rooftop above the top floor of the Residential Unit shall be subject to an easement for the benefit of all Unit Owners for the installation, operation, maintenance, repair and replacement of a cooling tower, cooling tower supply and return piping and other HVAC equipment, kitchen exhaust shafts and fans, dishwasher exhaust shafts and fans and power, antennas, satellite dishes, and other similar telecommunications devices or equipment. All such equipment or apparatus shall be installed and maintained at the exclusive cost of its respective Unit Owner and without undue disruption to the Residential Unit or the Residential Unit Owner. Notwithstanding the foregoing, to the extent such equipment or apparatus is installed, operated and maintained in accordance with the applicable design criteria specified in the Rules, manufacturer specifications and the Rules, such equipment or apparatus shall be deemed to have been installed, operated and maintained in a manner that does not create any undue disruption to the Residential Unit or the Residential Unit Owner. All such equipment or apparatus to the extent not required to be insured by the Council of Unit Owners shall be insured at the exclusive cost of its respective Unit Owner. The Owner of the Residential Unit shall have a reasonable right to approve the plans and specifications for any equipment or apparatus and structural reinforcements installed by the Owner of the Commercial Unit on the roof above the top floor of the Residential Unit, such approval not to be

unreasonably withheld, conditioned or delayed. If a cooling tower is required to be installed by another Unit Owner on the rooftop above the top floor of the Residential Unit, such installation shall include any necessary structural reinforcement and shall comply with the requirements of this Section 3.2(g). Any Unit Owner utilizing the roof for any of the foregoing purposes shall be responsible for any damage done to the roof and shall insure that the roof is returned to the same sound condition as existing prior to the installation of any such apparatus, ordinary wear and tear excepted. Any Unit Owner utilizing the roof for any of the foregoing purposes shall provide notice to the Residential Unit Owner in accordance with Section 3.5 below. No equipment or apparatus shall be permitted if its installation, use or operation may result in a voiding of the roof warranty as determined by the entity providing the roof warranty. Any work performed on the roof shall be performed or supervised by the entity providing the warranty for the roof. After the expiration of the warranty for the roof, any work performed on the roof shall be performed or supervised by a qualified licensed commercial roofing contractor with substantial experience with similar roofing systems as selected by the Board of Directors or the Condominium Managing Agent.

**(h) Easements to the Commercial Management District for the Project.**

The Commercial Management District for the Project shall have an easement in, over, under, through and across the Common Elements for the purpose of inspection, operation, maintenance, repair, improvement and replacement of public amenities for the Project, such as, by way of example, streetscapes, landscaping, public benches and public bicycle racks. Nothing contained in the foregoing shall impose any obligation on the part of the Commercial Management District to perform any inspection, operation, maintenance, repair, improvement or replacement of public amenities for the Project and any such duties of the Commercial Management District shall be governed by a separate agreement between the Commercial Management District and the Council of Unit Owners.

**Section 3.3. Encroachments.** If any portion of the improvements within the Property (including any improvements comprising the Units or Common Elements now or hereafter constructed) encroaches upon any other portion of the Property as a result of settlement, shifting, architectural or engineering deviations (within typical construction industry standards for mixed-use projects or as authorized or agreed by all affected Unit Owners) or movement of the encroaching improvement, an easement for such encroachment shall exist so long as the encroaching improvement shall remain in existence, provided such encroachment is not intentional and does not materially adversely affect the burdened Unit (or as authorized or agreed by all affected Unit Owners). If any building or other improvements within the Property or within a Unit shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation and then rebuilt to essentially the same configuration as originally constructed prior to such casualty or condemnation, an easement shall exist for unintentional encroachments by such buildings or other improvements upon any portion of the Property that do not materially adversely affect the burdened Unit for so long as such rebuilt buildings or other improvements shall remain in existence. The easement rights granted under this Section shall include an easement for the maintenance, repair, and replacement of the encroaching improvement.

**Section 3.4. Characteristics of Easements.** Subject to the provisions of the Condominium Documents, all easements and rights of ingress, egress and access created by this

Declaration are appurtenant to and run with the Property, are perpetual, free of charge and non-exclusive, may be used by the agents, employees, tenants, licensees, contractors, customers and invitees of the Benefited Owner and shall continue in full force and effect until the termination of this Declaration, unless otherwise terminated with the written consent of the Benefited Owner. The word "in" with respect to an easement granted "in" a particular Unit or Common Element means, as the context may require, "in", "to", "over", "through", "on", "across", and "under", or any one of the foregoing.

**Section 3.5. Exercise of Easements.** To the extent that this Article 3 establishes easements for the benefit of the Council of Unit Owners or one or more Unit Owners, the Council of Unit Owners and each such Unit Owner (the "**Benefited Owner**") shall have all rights and privileges reasonably necessary to the exercise of such easements consistent with the rights and privileges of the other Unit Owners and the Council of Unit Owners; provided, however, that the Benefited Owner shall take reasonable steps to minimize any damage to the Property, or injury or damage to other Unit Owners, as a result of its exercise of such rights and privileges and in no event shall the exercise of such easement violate the terms of the Condominium Documents or unreasonably or materially interfere with or disrupt the use or enjoyment of any Unit or with the use or enjoyment of the Common Elements for the purposes for which each is reasonably intended. Each Unit Owner exercising any easement rights and making any repairs pursuant to Section 3.2(a) of this Declaration shall be obligated to promptly repair, at its own expense, any damage it caused by the exercise of such rights and to restore promptly, in accordance with Applicable Law and in a good and workmanlike manner consistent with prevailing industry standards for First Class properties, any damaged real or personal property to the condition of such property prior to the exercise of such rights. The Benefited Owner's use or exercise of the easements established by this Article 3 shall not unreasonably interfere with or disrupt the use and enjoyment of the Units or Common Elements by the other Unit Owners. Except in cases involving an emergency, a Benefited Owner shall make a reasonable effort to (i) give fifteen (15) days prior notice to the Unit Owner of any Unit burdened by an easement to be entered for the purpose of making repairs or replacements to materials or equipment located within an easement appurtenant to the Unit of the Unit Owner making the repair or replacement, and (ii) perform such maintenance and replacements at such times and in such a manner that will not cause undue disruption or interference with the activities of any Unit Owner.

**Section 3.6. Burdened Owner's Right to Relocate a Benefited Owner's Easement.** The Owner of a Unit burdened by an easement (the "**Burdened Owner**") shall have the right, at the Burdened Owner's expense, to relocate the easement and any facilities located therein with the prior approval of the Benefited Owner, which approval shall not be unreasonably withheld, conditioned or delayed. It shall not be deemed unreasonable to withhold approval if in the sole discretion (acting in good faith, and not arbitrarily or capriciously) of the Benefited Owner such relocation materially and adversely affects the cost, efficiency or use of the easement or facilities located therein. The Burdened Owner shall take commercially reasonable steps to minimize any interference with the use of the easement by the Benefited Owner during the course of its relocation. In no event shall the Burdened Owner's exercise of its right of relocation unreasonably or materially interfere with the use of the Benefited Owner's Unit or the rights of the Benefited Owner to the use and enjoyment of the easement or the facilities located therein.

**Section 3.7. Development Cooperation.** Subject to the terms and conditions of the Condominium Documents, each Unit Owner shall use commercially reasonable efforts to cooperate with each other Unit Owner in any construction, reconstruction, or improvement of a Unit that is in accordance with this Declaration, the Bylaws and Applicable Law. Without limiting the generality of the foregoing, to the extent any Unit Owner reasonably requires site plans, permits, consents, approvals, utility easements, or other rights or information from other Unit Owners to fulfill any requirements imposed by any state or local governmental or quasi-governmental agencies, or utility companies or otherwise in connection with the permitted use or development of such Unit Owner's Unit, such other Unit Owners shall provide such consents, approvals, rights, or information, provided that (a) all costs reasonably related to the same shall be borne by the requesting Unit Owner, and (b) such consents, approvals, rights, or information shall not materially and adversely affect the use, operation or enjoyment of the Unit of the cooperating Unit Owner.

**Section 3.8. Alternative Percentage Allocations and Special Maintenance Expenses.** General Common Expenses shall be shared among the Unit Owners based on their respective Percentage Interests as set forth on Exhibit "D" attached hereto. All expenses incurred by or on behalf of the Council of Unit Owners, except for Special Maintenance Expenses (herein defined), shall be deemed General Common Expenses. However, the costs associated with the operation, maintenance, insurance, repair and replacement of certain portions of the Property (the "**Special Maintenance Items**"), including, but not limited to, those described on Exhibit "E" attached to and made a part hereof are based solely on an allocation different than their respective Percentage Interests. Such different allocation is hereinafter referred to as the "**Alternative Percentage Allocation.**" All costs associated with operation, insurance, maintenance, repair and replacement of the Special Maintenance Items and Limited Common Elements, including but not limited to those listed on Exhibit "E" shall be shared among the Unit Owners based solely on the Alternative Percentage Allocation *provided, however*, that to the extent there is no Alternative Percentage Allocation designated to any Special Maintenance Item, then such allocation shall be based upon the Percentage Interest of the Unit Owner(s) to which such Special Maintenance Item is appurtenant. All expenses associated with the operation, insurance, maintenance, repair and replacement of the Special Maintenance Items referenced in Exhibit "E" are collectively hereinafter referred to as the "**Special Maintenance Expenses.**" The Special Maintenance Expenses shall be shared among the Unit Owners based on the Alternative Percentage Allocation as set forth on Exhibit "E" to this Declaration, or as otherwise determined by the Board of Directors. Notwithstanding anything contained in the Condominium Documents to the contrary, any decisions concerning the use, operation, insurance, maintenance and repair of Special Maintenance Items shall be solely decided by the Unit Owner(s) responsible for the Special Maintenance Expenses of such Special Maintenance Items.

## **ARTICLE 4**

### **RULES; MANAGEMENT**

**Section 4.1. Rules.** Reasonable Rules not in conflict with this Declaration, the Bylaws and the Maryland Condominium Act concerning the use and enjoyment of the Property may be promulgated and amended from time to time by the Board of Directors in accordance with the Bylaws. Copies of the Rules and any amendments thereto shall be furnished to all Unit Owners promptly after adoption or amendment of such Rules. Rules that affect two (2) or fewer Unit

Owners shall only require the consent of the affected Unit Owners. The Rules shall have the same binding effect on all Unit Owners as this Declaration or the Bylaws subject to Section 11.3(c) of this Declaration.

**Section 4.2. Condominium Managing Agent.** As more particularly set forth in Section 3.12 of the Bylaws, the Board of Directors may employ one or more professional, experienced Condominium Managing Agents to oversee the operation of all or a portion of the Condominium in accordance with the Condominium Documents. The Condominium Managing Agent(s) shall be entitled to receive a reasonable fee (which shall constitute a General Common Expense), as determined by the Board of Directors.

## **ARTICLE 5**

### **UNIT AUTONOMY AND COUNCIL OF UNIT OWNERS AUTHORITY**

**Section 5.1. Autonomy of Units.** It is the intent of Declarant that the Condominium Documents establish a viable mixed-use condominium whereby the Commercial Unit, Residential Unit and Parking Unit can harmoniously co-exist with minimal disturbance or interference from one another. Except as otherwise set forth in the Condominium Documents, it is intended that each Unit be able to operate without unreasonable interference from another Unit or Unit Owner, and that each Unit Owner shall have exclusive control over its respective Unit, except to the extent that such control would materially interfere with the reasonable use, operation or enjoyment of any portion of the Property by another Unit Owner. Subject to and in accordance with the Condominium Documents, the Residential Unit Owner and the Commercial Unit Owner shall use commercially reasonable efforts to operate, manage and maintain its respective Unit in a First-Class manner and the Parking Unit Owner shall operate, manage and maintain the Parking Unit in a good and workmanlike manner, in accordance with all Applicable Law and comparable with other governmentally owned parking garages in the County; provided, however, that in all circumstances, the Parking Unit Owner shall be expressly obligated to comply with the Rules that are applicable to the Parking Unit. Except as specifically set forth in Article 8 of this Declaration and the Rules, nothing contained in the Condominium Documents shall confer or be deemed to confer any right of review and/or approval on any Unit Owner or third party with respect to the nature or quality of the tenants, tenant mix, tenant selection or leasing program for the Commercial Unit or the Residential Unit or leasing program for parking spaces within the Parking Unit; such decisions being reserved in the sole and exclusive discretion of the respective Unit Owner. Nothing contained herein, however, shall prohibit the Parking Unit Owner and Residential Unit Owner from entering into a separate agreement regarding reasonable rules and regulations and preventative measures designed to prohibit overnight parking in the Parking Unit by residents of the Residential Unit and means of lawfully enforcing such rules and regulations and preventative measures.

**Section 5.2. Standard of Authority for the Council of Unit Owners.** Unless expressly provided otherwise in the Condominium Documents, the Council of Unit Owners and the Board of Directors shall exercise their rights and obligations under the Condominium Documents using commercially reasonable business judgment, taking into account, among other things, the provisions of Section 5.1 above, the uses of the Units, sound fiscal management of the Condominium, and the fiduciary duty of the Board to the Unit Owners. Without limiting the

generality of the standards set forth in this Section, such standards shall apply to those matters in which the Board exercises its discretion under the Condominium Documents.

## **ARTICLE 6** **SECURITY**

The Council of Unit Owners and the Board of Directors shall have the right, but not the obligation, to maintain or support certain activities within the Property designed to enhance safety within the Condominium. Notwithstanding any references in the Condominium Documents, the Project or elsewhere to a security system, security personnel, fire access control systems or other systems of a similar nature (collectively, the **"Security Systems"**), neither the Council of Unit Owners, Declarant, the Unit Owners, their respective successors and assigns, nor any of their respective officers, members, employees, directors, agents or affiliates shall in any way be considered insurers or guarantors of security within the Condominium, nor shall any of them be responsible or held liable for any loss, damage, injury or death by reason of failure to provide adequate security or the ineffectiveness of the Security Systems. No representation or warranty is made that any Security System cannot be compromised or circumvented, nor that any such Security Systems or security measures undertaken or provided will in all cases prevent loss, damage, injury or death or provide the detection or protection for which the Security System is designed or intended. Each Unit Owner acknowledges and understands that the Council of Unit Owners, Declarant and the Unit Owners are not insurers or guarantors and that each Unit Owner assumes all risks for loss, injury or death to persons, and for loss or damage to its Unit and to the contents of its Unit resulting from the failure or ineffectiveness of a Security System.

## **ARTICLE 7** **INDEMNITIES**

Each Unit Owner (an **"Indemnitor"**) shall defend (with counsel reasonably acceptable to the Indemnatee), indemnify and hold harmless, at its expense, the Council of Unit Owners and any other Unit Owner (individually and collectively the **"Indemnatee"**) against and from all claims, demands, liabilities, penalties, damages, actions, suits, losses, expenses and judgments, including court costs and reasonable attorneys' fees, distribution and costs (including those incurred through appeals), which may be imposed upon or incurred by or asserted against any such Indemnatee, to the extent arising out of (i) the development, construction, use, operation or maintenance by the Indemnitor or any tenant, subtenant, licensee, employee, contractor and agent of such Indemnitor of any portion of the Condominium, including those instances where the Indemnatee has used commercially reasonable efforts to cooperate with a Unit Owner in accordance with Section 3.7, above, and including, but not limited to, the execution of or joinder in any of the documents or other items specified in Section 3.7, above, or (ii) the Indemnitor's use or exercise of the easements established by Article 3, except to the extent any damage, injury or death shall have been caused by the negligence or willful act or omission, of such Indemnatee or its tenants, subtenants, licensees, employees, contractors and agents. This indemnification shall not be applicable to the extent that the claim, demand, liability, penalty, damage, action, suit, expense, loss or judgment arises out of injury, death, or damage occurring in, upon or about the Common Elements and is actually recovered by any liability insurance maintained by the Council of Unit Owners (or if the Council of Unit Owner's is named as an additional insured on such insurance policy) pursuant to the Bylaws.

**ARTICLE 8**  
**USE RESTRICTIONS**

***Section 8.1. Restrictions on Use of Units and Common Elements.***

(a) **General Use of Units and Common Elements.** Use of the Units and Common Elements shall be subject to the following:

(i) Nothing shall be done or kept within the Units or Common Elements by any Unit Owner that will increase the rate of insurance payable by the Board of Directors, unless the Unit Owner causing such increase pays the total increase in premiums attributable to such use or action. No Unit Owner shall knowingly (based upon its actual knowledge) permit anything to be done or kept within the Units or Common Elements that will result in the cancellation of insurance for all or any portion of the Property or that would be in violation of Applicable Law. No physical waste will be committed on the Common Elements.

(ii) No use shall be made of any portion of the Residential Unit, Commercial Unit or the Common Elements that is not comparable and in keeping with a First Class standard; provided, however, that no use shall be made to any portion of the Parking Unit that is not comparable with the use of other governmentally owned parking garages in the County, however, that in all circumstances, the Parking Unit Owner shall be expressly obligated to comply with the Rules that are applicable to the Parking Unit. No use shall be made of any portion of the Units or Common Elements that materially and adversely impedes the conduct of the business of any Unit Owner or its tenants, subtenants, licensees, employees, contractors and agents or the occupancy, use or enjoyment of any Unit for the purposes for which such Unit is intended as set forth in the Condominium Documents. Applicable Law relating to any portion of the Units or the Common Elements shall be complied with by and at the sole expense of the Unit Owner or the Board of Directors, whichever shall have the responsibility for such portion of the Units or the Common Elements.

(iii) Except for Reserved General Common Elements or as otherwise provided elsewhere in the Condominium Documents, no Unit Owner shall unreasonably obstruct any of the General Common Elements and no Unit Owner shall place or cause or permit anything to be placed on or in any of the General Common Elements without the approval of the Board of Directors, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, that, except as provided in Section 3.2(c) of this Declaration, in no event shall any obstructions within the General Common Elements be permitted that would materially interfere with access to or visibility of any Unit. No Unit Owner shall unreasonably obstruct a Limited Common Element that is reserved for the exclusive use of another Unit Owner. Except as otherwise provided elsewhere in the Condominium Documents, nothing shall be altered, constructed in, or removed from the General Common Elements except with the prior consent of the members of the Board of Directors, which approval shall not be unreasonably withheld, conditioned, or delayed. Nothing shall be altered or constructed in or removed from a Limited Common Element, except with the prior written consent of the Unit Owner(s) of the Unit(s) having the exclusive use thereof.



(iv) Except as provided in instruments recorded among the Land Records to which the Property is subject (including, but not limited to, the Condominium Documents), the Common Elements shall be used only for the furnishing of the services and facilities for which the same are reasonably suited and which are incident to the use and occupancy of the Units.

***Section 8.2. Restrictions on Use of the Units.***

(a) **General Restrictions.** The Units shall be operated in accordance with the Condominium Documents and Applicable Law. Unless the Board of Directors otherwise agree, the Parking Unit shall always be utilized for parking and related purposes for the Parking Beneficiaries, and subject to Section 8.2(d), below, the Commercial Unit shall always be used for commercial, retail and related purposes and the Residential Unit shall always be used for residential and related purposes. Without limiting the foregoing, unless otherwise agreed by the Board of Directors, the Parking Unit Owner shall use commercially reasonable efforts to restrict the use of the Parking Unit by persons other than the Residential Unit Owner and the Commercial Unit Owner and their respective agents, employees, tenants, subtenants, licensees, customers and invitees (together, the "**Parking Beneficiaries**") to the extent reasonably necessary to provide and maintain adequate parking for the use and benefit of the Parking Beneficiaries. The Parking Unit Owner shall make available for the Parking Beneficiaries two hundred and twenty-five (225) parking spaces within the Parking Unit at all times.

(b) **Specific Restrictions.** In addition to the restrictions contained in the Rules, no Unit shall be utilized for any of the following uses unless otherwise expressly permitted in the Condominium Documents or by the Board of Directors:

(i) Any use that produces or is accompanied by any unusual fire, explosive or other damaging or dangerous hazard (including the storage, display or sale of explosives or fireworks, other than de minimus amounts of fireworks for sale to consumers to the extent permitted by Applicable Law).

(ii) Any shooting gallery or gun range (other than an electronic or arcade type shooting gallery or gun range).

(iii) Any operation primarily used as a storage warehouse and any assembling, manufacturing, refining, smelting, industrial, agricultural, drilling or mining operation (except that incidental storage use ancillary to residential use by the Residential Unit Owner shall be permitted).

(iv) Any automobile body shop or repair operation, including automobile servicing or repair work (e.g., oil change, tire change, body or paint shop, tune-up, brake or muffler service).

(v) Gasoline or automobile service stations.

(vi) Any residential use by the Commercial Unit Owner or the Parking Unit Owner, including but not limited to, single family dwellings, townhouses, condominiums,

other multi-family units of other forms of living quarters, sleeping apartments or lodging rooms. This Section 8.2(b)(vi), however, does not apply to the Residential Unit.

(vii) Any veterinarian, veterinary hospital or animal raising facilities (except that this prohibition shall not prohibit pet shops).

(viii) Any mortuary or funeral home.

(ix) Any facility or establishment primarily selling or exhibiting sexually explicit, or pornographic materials or a "head shop" (or any other type of establishment for the sale of illegal drugs and/or drug-related paraphernalia or equipment) or featuring strip tease acts or nude dancing.

(x) Any nightclubs, discotheque, dance hall, or bar whose sales of food do not constitute at least ten percent (10%) of its gross sales.

(xi) Any on-site commercial laundry, dry cleaning plant or Laundromat (however, any retail dry cleaning drop off and pick up store is permitted).

(xii) Any temporary or permanent storage of any "hazardous material" as that term may now or hereafter be defined by Applicable Law; provided, however, that this prohibition shall not apply to (a) supplies for cleaning and maintenance in commercially reasonable amounts required for use in the ordinary course of business, provided such items are incidental to the use of a Unit and are stored and used in compliance with Applicable Law, (b) standard office supplies in commercially reasonable amounts required for use in the ordinary course of business, provided such items are incidental to the use of the premises and are stored and used in compliance with Applicable Law, or (c) retail tenants' inventory generally held for resale in typical First Class retail projects and not prohibited elsewhere in the Condominium Documents, provided such inventory is stored and sold in compliance with Applicable Law.

(xiii) Any sales or leasing of new or used vehicles, including automobiles, trucks recreation vehicles or mobile homes (including used car lots), or any sales or leasing of new or used vehicles, including automobiles, trucks, recreation vehicles, or mobile homes, within any portion of a Unit that is outside any leasable space within the Buildings of such Unit.

(xiv) Any carnival, flea market, pawn shop, or car wash.

(xv) Any gambling facility or operation, including, but not limited to, off-track or sports betting parlor, table games such as blackjack or poker, or similar activities or a bingo hall; provided, however, that this prohibition shall not apply to slot machines, video poker, video blackjack or similar devices, Keno or the sale of governmental sponsored lottery tickets that are incidental to the business operation being conducted by the occupant of the Commercial Unit.

(xvi) Any "amusement parlor" consisting primarily of pin ball, video or similar arcade games in excess of 1,500 square feet.

(c) **Residential Restriction.** The Residential Unit shall only be used for residential and related purposes in a First Class manner and, except as may be expressly required by Applicable Law, no part of the Residential Unit shall be used for the purpose of an apartment hotel, hotel, time share development, assisted living residence, nursing home, homeless shelter, subsidized housing or similar moderate to low income housing, *provided, however*, that the Residential Unit may be used for corporate rentals (i.e., leases to parties who are leasing units for corporate housing purposes) to tenants, *provided, further*, that such corporate rentals shall not exceed twenty percent (20%) of all of the dwelling units within the Residential Unit. The foregoing restriction regarding subsidized or moderate to low income housing shall not apply to any “moderately priced dwelling unit” as defined in Chapter 25A of the Montgomery County Code, as amended (commonly referred to as a “MPDU”), required by the County.

(d) **Commercial Restriction.** The Commercial Unit shall only be used for commercial, retail and related purposes in a First Class manner.

## **ARTICLE 9**

### **INSURANCE**

#### ***Section 9.1. Insurance to be Carried by the Council of Unit Owners.***

(a) Unless the Board of Directors otherwise agrees, it shall use commercially reasonable efforts to obtain on behalf of the Council of Unit Owners (or cause a Unit Owner to obtain on behalf of the Council of Unit Owners, subject to the prior approval of the other Unit Owners) the following insurance (or such greater or additional insurance as is deemed commercially reasonable by the Board of Directors) on or in connection with the Condominium:

(i) Insurance against risk of physical loss or damage to the Base Building (hereafter defined) and, to the extent insurable, the Common Elements located elsewhere on the Property, as provided under “all-risk of physical loss” extended form or equivalent policy of insurance in amounts of not less than the full replacement cost of the Base Building (exclusive of excavation and foundation costs) or such other amount as is deemed adequate by the Board of Directors to prevent the Condominium, the Board of Directors and all Unit Owners from being a co-insurer in the event of casualty loss, without deduction for depreciation; and including coverage for common boiler and machinery, and coverage for the perils of hail, windstorm, earthquake (in reasonable amounts if the Condominium is located in an earthquake zone), flood coverage (in reasonable amounts if the Condominium is located in a special flood hazard area) and, to the extent required by a Mortgagee, terrorism insurance (however, if the Mortgagee of only one Unit requires terrorism insurance, then such insurance shall be at the sole cost and expense of the Unit Owner of that Unit). In addition, such insurance policy shall include business interruption coverage and coverage for loss of rents, as applicable (and any Sub-Condominium shall carry equivalent type of coverage for loss of assessments). Such policies shall contain replacement cost and agreed amount endorsements and shall contain commercially reasonable deductibles. If any portion of the Base Building constitutes a legal non-conforming structure under Applicable Law, such policies shall also include Applicable Law coverage endorsement. As used herein the term “**Improvements and Betterments**” means those portions of the interior of a Unit whose removal will not materially adversely affect the structure, safety or exterior appearance of the Base Building or the functionality of any other

Unit located within the Building. Examples of Improvements and Betterments include non-load bearing interior walls and partitions, floor coverings, wall coverings, furniture and fabrics, plumbing fixtures exclusively serving a single Unit, kitchen fixtures, drop ceilings and utility systems serving only a single Unit. Improvements and Betterments do not include, among other things, the exterior walls, windows, doors and roofs of the Building, concrete floor or ceiling slabs, beams, columns and structural framings, life safety (including sprinklers) systems, elevators and elevator shafts, stair wells and common utility systems. The Building, saving and excepting the Improvements and Betterments located therein, is hereinafter called the “**Base Building**.” To the extent a Unit Owner desires additional insurance coverage beyond that required to be obtained by the Board of Directors, such Unit Owner may (i) obtain the same at its own expense or (ii) have the Board of Directors obtain the same, provided that such Unit Owner reimburses the Council of Unit Owners for all costs and expenses related to such additional insurance.

(ii) Commercial General Liability Insurance and, to the extent applicable, Business Automobile Liability Insurance (including Non-Owned and Hired Automobile Liability) against claims for personal and bodily injury, death or property damage occurring on, in or as a result of the use of the Property, in an amount not less than \$25,000,000 per occurrence/annual aggregate and all other coverage extensions that are usual and customary for properties of this size and type; *provided, however*, that the Board of Directors shall have the right from time to time to require such higher limits as may be reasonable and customary for First Class properties.

(iii) Worker's compensation insurance covering all persons employed by the Board of Directors or the Council of Unit Owners in connection with any work done on or about any of the Property, subject to such limits as may be required by Applicable Law.

(iv) Comprehensive Boiler, Machinery and Pressure Vessel Insurance covering any of the equipment on or in the Building used by the Council of Unit Owners or jointly used by both Unit Owners in an amount not less than \$5,000,000 per occurrence for damage to property; *provided, however*, that the Board of Directors shall have the right from time to time to require such higher limits as may be reasonable and customary for properties of this size and type. If the insurance described in Paragraph (i) above and the insurance described in this Paragraph (iv) are not written by the same insurer, then both policies shall contain a joint loss agreement provision.

(v) During any period in which significant construction, alterations, repairs or reconstruction are being undertaken by the Board of Directors, builder's risk insurance covering the total completed value including any “soft costs” with respect to the improvements being constructed, altered, repaired or reconstructed (on a completed value, non-reporting basis), replacement cost of work performed and equipment, supplies and materials furnished in connection with such construction or repair of improvements or equipment, together with such “soft cost” endorsements and such other endorsements as the Board of Directors or a Mortgagee(s) of the Unit(s) may reasonably determine (however, if the Mortgagee of only one Unit requires such additional coverage or endorsement(s), then such endorsements shall be at the sole cost and expense of the Unit Owner of that Unit) and commercial general liability, workers'

compensation and automobile liability insurance with respect to the services provided by the contractor.

(vi) Such other insurance, including, but not limited to, directors and officers and fidelity insurance (covering all Condominium employees and employees of the Condominium Managing Agent, including principals and employees of the Condominium Managing Agent), as the Board of Directors shall determine from time to time desirable, as required by Applicable Law, or as customarily carried by owners or operators of First Class properties. Notwithstanding the certain types of insurance and amounts of coverage required to be obtained pursuant to this Section 9.1(a), in obtaining insurance the Board of Directors may consider such factors as availability of types of insurance and the market for insurance premiums in deciding which type of insurance and the amounts of coverage to obtain, provided the same is consistent, as to types of coverage and amounts, with the requirements generally of institutional lenders or prudent owners or operators of First Class properties.

(vii) Because the Parking Unit Owner shall have the right to self insure in accordance with Section 9.3(d) of this Declaration (which self insurance program has a lower limit amount than that required under Section 9.3(a)(ii), below) and may also assert the defense of sovereign immunity against any claim or claims made against it, in addition to the foregoing commercial general liability insurance coverage, the Council of Unit Owners shall obtain, on behalf of the Residential Unit Owner and the Commercial Unit Owner, commercial general liability insurance coverage against claims for personal liability and bodily injury, death or property damage occurring in or as a result of the use of the Parking Unit, in an amount of not less than \$2,000,000.00 per occurrence/annual aggregate. Such policy shall be written by companies which have a Best's rating of A-/VII or above by Best's Rating Guide (or equivalent rating agency authorized to do business in the State of Maryland, if Best's no longer publishes insurance ratings) and shall name the Residential Unit Owner and Commercial Unit Owner and their respective Mortgagees as the insureds under the policy. The premiums for such coverage shall be a Special Maintenance Expense to be shared equally by the Residential Unit Owner and Commercial Unit Owner.

(b) The insurance required by Section 9.1(a) shall be written by companies which have a Best's rating of A-/VII or above by Best's Rating Guide (or equivalent rating agency authorized to do business in the State of Maryland, if Best's no longer publishes insurance ratings). The insurance policies (i) shall be for such terms as the Board of Directors may reasonably approve and (ii) shall be in amounts sufficient at all times to satisfy any coinsurance requirements thereof. The insurance referred to in Section 9.1(a)(i), (iv) and (v) shall name the Unit Owners and the Council of Unit Owners as additional insureds and the Mortgagees of the Units as Mortgagees as their respective interests may appear and shall name the Insurance Trustee as loss payee. The insurance referred to in Section 9.1(a)(ii) shall name the members of the Board of Directors (if available for the Directors at commercially reasonable rates) and the Council of Unit Owners as insureds and the individual Unit Owners and the Mortgagee of each Unit as additional insureds and shall be primary and non-contributory to any other coverage carried by such entities. If said insurance or any part thereof shall expire, be withdrawn, become void or become reasonably unsatisfactory to a Unit Owner or the Mortgagee of a Unit, the Board of Directors shall immediately obtain new or additional insurance reasonably satisfactory to such Unit Owner or Mortgagee; provided, however, that if such

insurance policy or any part thereof should become reasonably unsatisfactory to a Unit Owner or a Mortgagee of Unit Owner, then the dissatisfied Unit Owner or the Unit Owner of the dissatisfied Mortgagee shall be solely responsible for the additional costs incurred by the Council of Unit Owners for replacing such insurance policy. To the extent reasonably available, all insurance policies maintained pursuant to this Article 9 shall include a provision stating that an act or omission by a Unit Owner, unless acting within the scope of authority and on behalf of the Council of Unit Owners, does not void the insurance policy and is not a condition to recovery under the policy.

(c) Each insurance policy of the type referred to in Section 9.1(a)(i), (ii), (iv) and (v) shall contain standard non-contributory mortgagee clauses in favor of and reasonably acceptable to each Mortgagee. Each policy of the type required by any provision of this Section 9.1(a), except clause (iii) thereof, shall provide that it may not be cancelled or substantially reduced except after thirty (30) days' prior notice to the Board of Directors, the Council of Unit Owners, each Unit Owner and each Mortgagee. Each such policy of the type referred to in Section 9.1(a)(i), (iv) and (v) shall also provide that with respect to Mortgagee(s) any loss otherwise payable thereunder shall be payable notwithstanding any act or omission of the Board of Directors, the Council of Unit Owners or a Unit Owner. Neither the Board of Directors, the Council of Unit Owners, nor any Unit Owner shall occupy or use any portion of the Condominium for purposes more hazardous than those permitted by the provisions of such policy, provided that no such policy shall unreasonably restrict the purposes for which the Units are intended to be used. The documentation with respect to each Mortgage shall contain provisions (and the Mortgagee shall acknowledge therein) to the effect that the Mortgagee acknowledges that the proceeds of the insurance policies required to be carried under Section 9.1(a)(i), (iv), and (v) and the additional assessments to be funded under Section 10.3(d) below, shall be available for repair and restoration of the Condominium. However, any Mortgagee shall be entitled to impose reasonable procedures on the disbursement of insurance proceeds for the repair and/or restoration of the Base Building (but in no event shall the Mortgagee be entitled to withhold such insurance proceeds), including a demonstration by the Board of Directors that the amount of such proceeds (together with such other funds as the Council of Unit Owners may agree to make available under Section 10.3(d), below) is sufficient for such purpose.

(d) The Board of Directors shall pay as they become due all premiums for the insurance required by Section 9.1(a), shall renew or replace each policy and deliver to each Unit Owner and the Mortgagee of each Unit, promptly upon request, evidence of the payment of insurance premiums and shall promptly, upon request, deliver to each Unit Owner and the Mortgagee of each Unit, promptly upon request, copies of all original certificates of insurance.

(e) The Board of Directors shall have the replacement cost and insurable value of the Condominium determined from time to time as may be reasonably determined by the Board of Directors or as may be required by the insurance carrier.

(f) If, subject to Section 9.1(a) hereof, the insurance in Section 9.1(a)(i), (ii), (iv) and (v) is procured by a Unit Owner on behalf of the Council of Unit Owners, then such coverage may be carried under a blanket policy so long as such coverage fulfills the requirements contained herein, provided that such coverage is specifically allocated to the

Condominium and cannot be exhausted by claims related to other property owned by such Unit Owner.

(g) The premiums payable with respect to the insurance described in Section 9.1(a) shall be a General Common Expense, except to the extent such insurance is for Special Maintenance Items, in which case premiums for Special Maintenance Items shall be a Special Maintenance Expense.

***Section 9.2. Adjustment of Insurance Coverage.*** Notwithstanding anything in the Condominium Documents to the contrary, each Unit Owner may, at its election and not more than once every three (3) years, reevaluate the adequacy of the insurance coverages obtained pursuant to Section 9.1 above. If such coverages have become inadequate in comparison to the coverages that are generally maintained for properties similar to the Condominium, then such Unit Owner may require that the Board of Directors provide such additional insurance coverage as is reasonably necessary.

***Section 9.3. Insurance to be Carried by the Unit Owners.***

(a) Each Unit Owner shall carry the following insurance and shall deliver certificates of insurance in form and substance reasonably satisfactory to the Board of Directors evidencing such coverage to the Board of Directors upon request:

(i) All-risk of physical loss insurance coverage insuring the Improvements and Betterments located within such Owner's Unit for the full replacement cost thereof.

(ii) Commercial General Liability Insurance and, to the extent applicable, Business Automobile Liability Insurance (including Non-Owned and Hired Automobile Liability) against claims for personal and bodily injury, death or property damage occurring on, in or as a result of the use of the Property, in an amount not less than \$25,000,000 per occurrence/annual aggregate and all other coverage extensions that are usual and customary for properties of this size and type.

(iii) Worker's compensation insurance covering all persons employed by such Unit Owner in connection with any work done on or about any of the Property, subject to such limits as may be required by Applicable Law.

(iv) Comprehensive Boiler, Machinery and Pressure Vessel Insurance covering any of the equipment on or in the Building owned by such Unit Owner in an amount not less than \$5,000,000 per occurrence for damage to property.

(v) During any period in which significant construction, alterations, repairs or reconstruction are being undertaken by a Unit Owner, builder's risk insurance covering the total completed value including any "soft costs" with respect to the improvements being constructed, altered, repaired or reconstructed (on a completed value, non-reporting basis) by such Unit Owner, replacement cost of work performed and equipment, supplies and materials furnished in connection with such construction or repair of improvements or equipment, together with such "soft cost" endorsements and such other endorsements as the Board of Directors may

reasonably determine and commercial general liability, workers' compensation and automobile liability insurance with respect to the services provided by the contractor.

(b) The insurance required under Section 9.3(a) of this Declaration shall be written by companies which have a Best's rating of A-/VII or above by Best's Rating Guide (or equivalent rating agency authorized to do business in the State of Maryland, if Best's no longer publishes insurance ratings).

(c) The liability of carriers issuing insurance obtained by the Board of Directors shall not be affected or diminished by reason of any such additional insurance carried by any Unit Owner.

(d) Notwithstanding anything in the foregoing to the contrary, during such time that the City of Rockville, Maryland ("City") is the fee simple owner of the Parking Unit, the City of Rockville may maintain the insurance required under this Section 9.3 pursuant to the City's self-insurance program administered by the Division of Risk Management for Montgomery County, Maryland, in accordance with the provisions of the Local Government Tort Claim Act, and for all of the City's employees.

(i) If the City elects to self insure pursuant to the foregoing, then the City shall provide the Council of Unit Owners with complete details of the City's self insurance program, including, but not limited to, annual copies of (a) the then current Participating Agency Agreement by and between the City and the County; (b) the underlying documents associated with the City's self insurance program; (c) any commercial policies carried by the City or the County on behalf of the City (including, primary or reinsurance policies); and (d) the annual actuarial report for such self-insurance program. In addition, the Council of Unit Owners shall have the right to annually audit, by an independent insurance consultant, the funds maintained in such self-insurance program in order to ensure that such funds are adequate to pay out any such claims or potential claims.

(ii) If (a) the funds in the self insurance program are determined to be inadequate for such purpose, or (b) the actuarial report is not reasonably satisfactory to the Council of Unit Owners (including, but not limited to, the confidence interval set forth in such report), or (c) the Participating Agency Agreement changes and such changes are not reasonably satisfactory to the Council of Unit Owners, or (d) the commercial general liability insurance coverage set forth in Section 9.1(a)(vii), above, is no longer available or is determined to be inadequate for the purpose for which it is intended, then in any or all such instances the Council of Unit Owners, pursuant to the majority consent of the members of the Council of Unit Owners to do so, may purchase the insurance coverage otherwise required to be maintained by the City of Rockville pursuant to this Section 9.3 and the City of Rockville shall reimburse the Council of Unit Owners the cost of acquiring such policy as a Special Maintenance Expense.

**Section 9.4. Mutual Waiver of Subrogation.** With respect to property loss or damage, the Council of Unit Owners and Board of Directors for the Condominium waive any rights of recovery against the Unit Owners and the Unit Owners waive any rights of recovery against the other Unit Owner(s) and the Council of Unit Owners, regardless of whether such loss is due to the negligence of any party. Any party obtaining insurance shall also ensure that all property



insurance policies obtained by the Board of Directors for the Condominium or by a Unit Owner shall include a clause or endorsement denying the insurer any rights of recovery or subrogation in favor of the Unit Owners and the Council of Unit Owners.

## **ARTICLE 10**

### **REPAIR AND RECONSTRUCTION AFTER FIRE OR OTHER CASUALTY**

***Section 10.1. When Repair and Reconstruction are Required.*** Except as otherwise provided in Section 10.4 [When Reconstruction is Not Required], if all or any part of the General Common Elements or of the Base Building are damaged or destroyed as a result of fire or other casualty, the Board of Directors shall arrange for and supervise the prompt repair and restoration thereof.

#### ***Section 10.2. Procedure for Reconstruction and Repair.***

(a) **Cost Estimates.** Subject to Section 10.4 [When Reconstruction is Not Required], as soon as reasonably practicable under the circumstances after a fire or other casualty causing damage to any portion of the Common Elements or of the Base Building, the Board of Directors shall obtain reliable and detailed estimates (if reasonably practicable under the circumstances, no fewer than three (3)) of the cost of repairing and restoring such portion of the Common Elements and the Base Building to a condition at least as good as that existing before such fire or other casualty.

(b) **Plans and Specifications.** Unless otherwise agreed by the consent of the members of the Board of Directors, any such reconstruction or repair shall be substantially in accordance with the plans and specifications for the original construction of the Property, using contemporary building materials and technology to the extent feasible, subject to any modifications required by changes in Applicable Law and any alterations or modifications made to the Property since the date of the original construction.

#### ***Section 10.3. Disbursements of Construction Funds.***

(a) **Construction Fund and Disbursement.** The proceeds of the Council of Unit Owner's insurance on account of a fire or other casualty, and the sums received by the Board of Directors from collections of assessments against Unit Owners on account of such casualty, shall constitute a construction fund that shall be disbursed in payment of the costs of reconstruction and repair in the following manner:

(i) If the estimated cost of reconstruction and repair of the Common Elements and the Base Building is less than ten percent (10%) of the Council of Unit Owners' annual budget, then the construction fund shall be disbursed in payment of such costs upon order of the Board of Directors;

(ii) If the estimated cost of reconstruction and repair of the Common Elements and the Base Building is ten percent (10%) or more of the Council of Unit Owners' annual budget, then with respect to the coverages in Section 9.1(a) (i), (iv) and (v), payments shall be made to the Insurance Trustee in trust, as loss payee. The construction fund shall be disbursed in payment of such respective costs upon approval of a reputable architect licensed to

practice in Maryland who has been employed by the Board of Directors (and approved by the Insurance Trustee) to supervise such work and upon obtaining a release of liens from all contractors and subcontractors being paid, payment is to be made monthly as the work progresses (subject to any applicable retainage). The architect shall be required to furnish a certificate to the Board of Directors and the Insurance Trustee giving a brief description of the services and materials furnished by various contractors, subcontractors, materialmen, the architect and other persons who have rendered services or furnished materials in connection with the work stating that: (A) the sums requested by them in payment are justly due and owing and that such sums do not exceed the value of the services and materials furnished; (B) there is no other outstanding indebtedness known to such architect for the services and materials described; and (C) the cost as estimated by such architect for the work remaining to be done subsequent to the date of such certificate does not exceed the amount of the construction fund remaining after payment of the sum so requested.

(b) **Surplus.** The first monies disbursed in payment of the cost of reconstruction and repair shall be from insurance proceeds. If there is a balance in the construction fund after the payment of all of the costs of the reconstruction and repair for which the fund is established, such balance shall be either allocated to replacement reserves (if any) if the Board so determines, with the consent of the members of the Board of Directors, or allocated among all Unit Owners in proportion to the insured value of the respective Units or placed in the account of the Council of Unit Owners with the consent of the Member of the Board of Directors.

(c) **Order of Repair.** When the damage is to both Common Elements and the Base Building, the Council of Unit Owner's insurance proceeds shall be applied first to the cost of repairing those portions of the Common Elements and of the Base Building that enclose, service, or are necessary for the reasonable use, servicing and operation of the Units, then to the cost of repairing the other Common Elements and thereafter to the cost of repairing the other portions of the Base Building, unless otherwise determined with the consent of the members of the Board of Directors. Notwithstanding the foregoing, the order of priority with respect to repair of the Base Building and Common Elements shall be (1) Base Building and General Common Elements and (2) Limited Common Elements, if any.

(d) **Deficit/Deductible.** If the insurance proceeds and the funds from the replacement reserves are insufficient to effectuate all required repairs, any deficit shall be funded by an assessment against all Unit Owners in proportion to the full replacement cost of the respective Units. Any deductible required to be paid in connection with any insurable loss shall be a General Common Expense, except to the extent such insurance is for a Limited Common Element or a Special Maintenance Item, in which case such deductible shall be a Special Maintenance Cost.

**Section 10.4. When Reconstruction is Not Required.** The Board of Directors by vote shall elect not to repair or replace or cause to be repaired or replaced any portion of the Base Building or the Common Elements for which insurance is required that is damaged or destroyed if (a) the Condominium is terminated, (b) repair or replacement would be illegal under any Applicable Law, or (c) the Unit Owners vote not to repair or rebuild. If the Condominium is terminated, the insurance proceeds shall be distributed based upon the total insured value of the

respective Units. If the Base Building or the Common Elements are not repaired, the insurance proceeds attributable to the damaged Base Building or the Common Elements shall be used to restore the damaged areas to a safe and reasonable condition. The insurance proceeds attributable to the Units and Limited Common Elements that are not rebuilt shall be distributed to the Unit Owners of those Units and the Unit Owners of the Units to which those Limited Common Elements appertained, or to the Mortgagees, based upon the total insured value of the respective Units. The remainder of the insurance proceeds shall be distributed to all the Unit Owners or to the Mortgagees, as their interests may appear, in proportion to the total insured value of the respective Units. If any Unit is not rebuilt, then such Unit's allocated interests shall be automatically reallocated as if the Unit had been condemned under Section 11-112 of the Maryland Condominium Act, and the Council of Unit Owners promptly shall prepare, execute and record among the Land Records an amendment to the Condominium Documents reflecting the reallocation.

## **ARTICLE 11**

### **MISCELLANEOUS**

***Section 11.1. Estoppel Certificate.*** The Council of Unit Owners and any Unit Owner, upon request of the other such party, shall promptly execute and deliver an estoppel certificate to such parties as are reasonably requested (including a Mortgagee, prospective purchaser, or lessee), at any time and from time to time, upon not less than ten (10) days prior written request. If applicable, the estoppel certificate shall include a statement certifying that the Condominium Documents are unmodified (except as identified in the estoppel certificate) and in full force and effect, describing the dates to which Condominium assessments or other charges have been paid, representing that, to such party's actual knowledge, there is no default (or stating the nature of the alleged default) and indicating such other factual and readily ascertainable matters with respect to the Condominium Documents as may reasonably be requested. If the Council of Unit Owners or any Unit Owner fails to execute and deliver the estoppel certificate in accordance with this Section 11.1, the requesting party, after a five (5) day notice and opportunity to cure, may execute and deliver an estoppel on behalf of the other party, which estoppel certificate shall be fully binding, provided that is factually accurate and correct to the requesting party's actual knowledge.

***Section 11.2. Averting Public Dedication.*** All or any portion of the Common Elements may be temporarily closed to such extent as the Board of Directors shall determine to be legally necessary and sufficient to prevent a dedication thereof or any accrual of any rights in any person other than the Unit Owners. The Board of Directors will use reasonable efforts to minimize disruption to each Owner's use of its Unit during the period of any temporary closure.

### ***Section 11.3. Construction and Enforcement.***

(a) The provisions of the Condominium Documents shall be liberally construed to achieve the purpose of creating a uniform plan for the operation of the Property as a condominium. The Condominium Documents are intended to comply with the applicable provisions of the Maryland Condominium Act and shall be so interpreted and applied. The Council of Unit Owners, the Board of Directors, and any Unit Owner shall have the right to enforce the Condominium Documents by any proceeding at law or in equity against any person